CONSTITUTION.

WE, the delegates from the various Councils in the State of Indiana, assembled in convention in the city of Indianapolis, July 11, 1854, for the purpose of promoting the general welfare of the Order in said State, to further the cause for which we are united, and to secure all the blessings of American freedom to ourselves and to our posterity forever, do ordain and establish the following Constitution for the said State Council:

ARTICLE I.

SECTION 1. The State Council shall be composed of delegates elected by the County Councils throughout the State—one delegate shall be elected from each County Council, and each delegate shall be entitled to one vote, and an additional vote for every five hundred members within the county which he represents.

SEC. 2. The State Council shall meet annually, on the first Tuesday in September, at such place in the State as shall have been selected by the preceeding session.

SEC. 3. Each County Council shall be composed of delegates elected by the subordinate Councils within the proper county. Each subordinate Council being entitled to one delegate, and an additional delegate for every fifty members.

SEC. 4. A County Council shall be organized in each county in the State where there are not less than three subordinate Councils, and one hundred members of the Order resident in such county.

ARTICLE II.

OFFICERS AND HOW ELECTED.

SEC. 1. The officers of the State Council shall consist of a President, Vice President, Secretary, Treasurer, Chaplin, Marshal, and Sergeant-at-Arms.

SEC. 2. All the officers of the State Council shall be elected at the annual September session, separately, and by ballot, and shall hold their office for the term of one year, or until their successors are elected and installed.

ARTICLE III.

DUTIES OF OFFICERS.

SEC. 1. The President shall preside in the State Council, preserve order, and cause the Constitution and laws to be strictly observed by all its members. His decisions upon all points of order shall be obeyed, unless reversed on appeal. He shall have a casting vote in all cases. He shall sign all orders on the S. T., and all other documents which require his signature. He shall fill all vacancies in the State offices, until the next annual meeting. He shall have authority to grant dispensations for the institution of subordinate Councils, in the interim between the sessions of the State Council. To order the special communications of the S. C., or of Sub. C., whenever he may deem it requisite for the good of the Order: To transmit the ritual, pass-words, or other secret matters of the Order, to the proper officers of every Sub. C. in the State and Proxies. To appoint Proxies for such dis-

tricts as may, from time to time, be established, with the consent of the S. C.; and to exercise general supervision over the Order, according to its laws and customs, throughout the State, and to make a report of the same to the next meeting of the S. C.

Sec. 2. The Vice President shall, in case of the absence or death of the President, perform all his duties.

Sec. 3. The Secretary shall keep a record of the proceedings of the S. C., file all documents relating thereto, preserve all books and papers belonging to the same, and have the custody of the Seal. He shall receive all moneys due the S. C., and pay the same to the Treasurer; attest all orders drawn on the T., for moneys appropriated by the S. C.; keep the account of the S. C. with the Sub. C.'s, and report all delinquent Councils. He shall attest all dispensations and orders of the S. C., and when directed, summon all members to attend its special meetings. He shall transmit an annual report of the state of the Order in Indiana, to the Worthy President of the G. C. of the U. S. of N. A. He shall report such unfinished business of the preceeding session of this S. C. as requires action. He shall conduct the Correspondence of the S. C., and submit all documents to the P., and attend to such other business as the S. C. may direct. He shall be entitled for his services, to such compensation as the S. C. may, from time to time, determine upon, not exceeding the sum of $500 a year, and shall give such bond and security as the S. C. may require.

Sec. 4. The Treasurer shall have the custody of the funds of the S. C.; keep accurate accounts of all moneys received by him from the Sec., and pay all orders drawn on him by the P., attested by the Sec. He shall have all his accounts posted up at every regular ses.

sion, and submit them to the S. C., or any committee appointed for that purpose, together with a written report of the state of the treasury. He shall give such bond and security as the S. C. may, from time to time, require, and in a sum not less than double the amount he will probably at any time have in his hands; and he may be entitled to such compensation for his services as the S. C. may agree upon, not exceeding the sum of one hundred dollars a year.

Sec. 5. The Chaplain shall open and close the sessions of the S. C. with prayer, and perform all other duties appropriate to his office.

Sec. 6. The Marshal shall obey the orders of the President in the government of the S. C.; shall present officers elect for installation, receive and introduce delegates and visitors, and perform such other appropriate duties as the S. C. may direct.

Sec. 7. The Sergeant-at-Arms shall attend the entrance of the S. C., and shall permit no one to enter or depart, unless he conforms to the prescribed rules and regulations of the Order.

ARTICLE IV.

DELEGATES TO THE G. C. U. S. N. A.

Sec. 1. The proper number of delegates to attend the G. C. U. S N. A., shall be elected at the annual meetings of the S. C., by ballot, and shall hold their office for one year.

ARTICLE V.

AMENDMENTS, ETC.

Sec. 1. No alteration or amendment to this Constitution shall be made, unless the same be proposed in writing, and signed by at least five members of the S. C., at the communication previous to the vote being

taken thereon, nor shall any such amendment or alteration be adopted, unless by the assent of two-thirds of the voters present.

ARTICLE VI.

BY-LAWS, RULES, ETC.

SEC. 1. The State Council shall have power to adopt all such By-Laws, rules and regulations for the government of the S. and Sub. C.'s, not inconsistent with any of the provisions of this, or the Constitution of the G. C. of U. S. of N. A.

ARTICLE VII.

POLITICAL NOMINATIONS.

SEC. 1. The political power of the S. C. shall be limited to the selection of candidates for State Offices, and of State Electors, to be supported by the members of this Order; which selections shall be made by ballot.

CONSTITUTION

OF

SUBORDINATE COUNCILS.

PREAMBLE.

In order to produce uniformity in conferring degrees, and in the administration of the privileges, honors, and benefits of this Order within our jurisdiction, the State Council of the State of Indiana — who alone have the power to grant Charters or Dispensations to open Councils within this State, being the supreme tribunal of the Order within its limits, and without whose sanction and control, no Council of our honorable Order, can legally exist — ordains the following articles as the Constitution of Subordinate Councils working within its jurisdiction:

ARTICLE I.

NAME AND STYLE.

This Council shall be composed of not less than nine members, all of whom shall have received the Second Degree of the Order, and shall be known and recognized as ——— Council No. — of the ——— of the county of ——— and State of Indiana.

ARTICLE II.

OF MEMBERSHIP.

SEC. 1. No person shall be admitted a member of this Order, unless he be of good moral character, of the age of *twenty one* years, a believer in the Supreme Being — the Ruler of the Universe — a Protestant, born of Protestant parents, within the limits and jurisdiction of the U. S. of N. America, and educated under Protestant influence, and whose wife (if he has one) is not a member of the Roman Catholic Church.

SEC. 2. The name, age, residence, and occupation of all candidates proposed, shall be handed to the Secretary in writing with the names of the vouchers who may propose them, said vouchers being members of said Council.

SEC. 3. No application for membership shall be received and acted upon, from persons residing out of the State, or in remote districts, where Councils exist nearer their place of residence than the one to which they may apply, except by the permission of the nearest Council to the residence of the applicant.

SEC 4. A member of the Order wishing to join this Council shall present a certificate of membership from the Council to which he belonged, and from which he is discharged — said certificate shall be signed by the President and Secretary of the Council to which the brother formerly belonged, and he shall be received by ballot.

SEC. 5. No expelled member can be received a member of this Council until after the expiration of one year from such expulsion.

SEC. 6. All candidates shall be received by ballot; and five *black balls* shall be suffictent to exclude an applicant from the *first* Degree, and *three* from the *second*. When an applicant is rejected, he shall not

again be proposed for six months, unless his proposition be signed by nine members of the Order; in that case, it may be considered and acted upon.

ARTICLE III.

OF MEETINGS.

This Council shall assemble on ——— evening of each week, and shall open for work at ——— o'clock P. M. Five members of the same forming a quorum for the transaction of business. Special meetings may be called at any time by the President or Vice President, at the request of four members of the Order.

ARTICLE IV.

OF OFFICERS.

The officers of this Council shall consist of a President, Vice President, Instructor, Secretary, Treasurer, Marshal, Chaplain, inside and outside Sentinel, and shall hold their office for the term of six months or until their successors are elected and installed.

ARTICLE V.

ELECTION OF OFFICERS.

The officers of this Council shall be elected at the first regular meeting in January and July, separately and by ballot; and shall receive a majority of all the votes cast to entitle them to an election. No brother shall be elected to any office unless he be present and signify his assent thereto on the night of his election. Any vacancy which may occur by death, resignation, or otherwise, shall be filled at the next meeting thereafter, in the manner and form above described.

ARTICLE VI.

DUTIES OF OFFICERS.

SEC. 1. *The President.* — It shall be his duty to preside in the Council and enforce a due observance of the constitution and rules of the Order, and a proper respect for the G. C. of the U. S. of N. A., and the S. C. of Indiana — to have sole and exclusive charge of the Charter and Ritual of the Order, which he must always have in his possession when the Council is in session — to see that all officers perform their respective duties — to appoint all committees not over three in number — to announce all ballotings to the Council — to decide all questions of order — to give the casting vote, in all cases — to convene special meetings when deemed expedient — to draw warrants on the Treasurer for all sums the payment of which is ordered by the Council, and to perform such other duties as may be demanded of him by the Ritual of the Order.

SEC. 2. *The Vice President* shall assist the President in his duties while the Council is in session, and in his absence shall perform all the duties of the President.

SEC. 3. *The Instructor* shall assume the office of President during the absence of his two superior officers, and shall perform such duties as may be assigned him in the Ritual.

SEC. 4. *The Secretary* shall keep an accurate record of the proceedings of the Council. He shall write all communications, fill all notices, attest all warrants drawn by the President at regular meetings of this Council and none other — he shall keep a correct roll of all the members of this Council, together with their age, residence, and occupation, in the order in which they have been admitted — he shall at the end of every three months make out a report of all work done

during that time, which report he will place in the hands of the Secretary of S. C., and at the expiration of his term, shall deliver all books, papers, &c., in his hands, to his successor in office.

Sec. 5. *The Treasurer* shall hold all moneys raised exclusively for the use of the State Council, which he will pay over to the Secretary of the S. C. at its regular sessions, or whenever called upon by the President. He shall receive all moneys of this Council, and pay all amounts drawn on him by the President, if attested by the Secretary.

Sec. 6. *The Marshal* shall perform such duties as may be required of him by the Ritual.

Sec. 7. *The Chapluin* shall open all meetings with prayer.

Sec. 8. *The Inside Sentinel* shall have charge of the inner door, and act under the direction of the President. He shall admit no person, unless he can prove himself a member of this Order, except by order of the President.

Sec. 9. *The Outside Sentinel* shall have charge of the outer door, and act in accordance with the orders of the President. He shall permit no person to enter the outer door unless properly vouched for.

ARTICLE VII.

DEGREES—HOW GIVEN.

Sec. 1. All persons declared elected to membership, are eligible for the First Degree, and shall receive the same, if applied for within four weeks. A certificate of the Degree shall be given by the Secretary, bearing his attestation, and one dime shall be paid therefor.

Sec. 2. Any brother who holds a Degree Certificate, dated at least two weeks previously, and who may

have been elected to the Second Degree, by the members of this Council, shall receive the same, if applied for within two months. He shall receive a Certificate of the same, for which he shall pay the sum of fifty cents.

SEC. 3. All funds accruing from Degrees conferred, shall be paid over to the S. C., to be used for the general welfare of the Order.

ARTICLE VIII.

METHOD OF EXERCISING POLITICAL INFLUENCE.

SEC. 1. Each Sub. C., in every corporate city, town, or township, may elect one delegate, and an additional delegate for every additional fifty members of said C., and said delegates shall have power to nominate all candidates for city, town, or township offices.

SEC. 2. Every County Council shall have power to nominate all candidates for county offices, to be elected by the people, and to elect three delegates to attend a Congressional Council—each delegate being entitled to one vote, and an additional vote for every five hundred members in said county.

ARTICLE IX.

RITUAL OF THE ORDER.

The President will keep in his hands the Ritual or work of the Order. He will not suffer the same to go out of his possession under any pretense whatever, unless in case of absence, when he may put them in the hands of the V. P., or Instructor, or while the Council is in session, and then only for the purpose of Initiation, or conferring Degrees.

ORDERS.

ADOPTED BY THE BOARD OF OFFICERS OF THE STATE COUNCIL, INDIANAPOLIS, JULY 13, 1854.

1. That the Officers of the State Council, by virtue of their office, may exercise the duties of Proxies, as hereinafter provided, throughout the jurisdiction of the State Council.

2. That the State of Indiana be divided into eleven Districts, corresponding to the present Congressional Districts of said State.

3. That one Proxy be appointed by the President, in each Congressional District, and that the President of each County Council, by virtue of his office, shall be a Proxy in his proper county.

4. That Proxies are authorized, in the absence of the President, to take general supervision of the Order in their respective districts or counties; to open and institute new Councils, upon proper Dispensations from the President, and not otherwise; and to see that the work, ceremonies, and laws of the Order, are properly understood and adhered to.

5. That the device of the State Council seal, shall be the American Flag, and that of the County seal, the American Eagle.

6. That every County Council shall have a County seal. Such seals may be obtained from the Corresponding Secretary, for the sum of five dollars.

7. That for the entire Work of the Order, including Ritual, and Constitution of the Grand Council of the United States of North America, and Constitution of the State and Subordinate Councils, each Subordinate Council shall pay the sum of five dollars.

8. That for every Dispensation and Charter for opening Councils, the applicants shall pay therefor the sum of two dollars.

9. That these Constitutions be kept with the Ritual of the Order, and only seen and read in the Council Chamber during its sessions.

CONSTITUTION

OF THE

UNITED STATES

AND OF

INDIANA

WITH NOTES AND ANNOTATIONS

INDIANA
BUREAU OF LEGISLATIVE INFORMATION
BULLETIN NO. 1

November, 1913
INDIANAPOLIS

EMELINE FAIRBANKS MEMORIAL LIBRARY

TERRE HAUTE, IND.

BORROWERS

Any resident, taxpayer or student of Terre Haute is entitled to borrow books from the Library by filling out the proper application card and receiving a borrowers card. Books are lent for fourteen days and may be renewed once for two weeks from the date on which the request is made, except books with seven day labels which may not be renewed. Books are not exchanged on the day they are issued or on Sunday. Renewals may be made in person or by mail. In each case the card must be presented.

ISSUE OF BOOKS

Members of the Library are entitled to two cards, one being non-fiction. Cards must be presented whenever books are taken, returned or renewed. Books must be presented when they are transferred from one card to another. Cards are not transferable outside of the household. Books may not be transferred from one card to another in the same household.

FINES

A fine of three cents per day will be charged (including Sundays) on each volume kept overtime.

MUTILATION OF BOOKS

Books are supposed to be in good condition when issued, and the last borrower shall be held responsible for any mutilation or defacement, unless the same be reported when the book is issued.

CONSTITUTION

OF THE

United States and of Indiana

WITH

Notes and Annotations

Indiana Bureau of Legislative Information
Bulletin No. 1

INDIANAPOLIS:
WM. B. BURFORD, CONTRACTOR FOR STATE PRINTING AND BINDING
November, 1913

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INDIANA BUREAU OF LEGISLATIVE INFORMATION

STATE HOUSE, INDIANAPOLIS

INTRODUCTION

This bulletin containing the Constitution of the United States and of the State of Indiana, with brief explanations and annotations of decisions and authorities, is issued primarily for popular study.

There has not been available in convenient form any copies of the state and federal constitutions and the study of these fundamental instruments of government has been for that reason neglected.

No law can be passed or other act of government done which does not conform to the provisions of both federal and state constitutions. It is highly important therefore that the citizens of the State who are interested in good government should study the constitutions in order to know the fundamental structure of government; to see the limitations which the constitutions fix; and to be able to discover the powers granted as well as the limitations fixed.

It is hoped that schools, clubs and organizations will avail themselves of the opportunity to secure sufficient copies of this bulletin to supply those who are interested.

This Bureau will co-operate with any school or club and will furnish any information on request relative to the interpretation of any section of the constitution.

JOHN A. LAPP, Director.

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Constitution of the State of Indiana

1851

PREAMBLE.

To the end that justice be established, public order maintained, and liberty perpetuated: We, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have at all times an indefeasible right to alter and reform their government.

The theory upon which our institutions rest is, "that all men have certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one and that in the protection of these rights all are equal before the law." Cummings v. State of Missouri, 4 Wallace (U. S.) 277.

SEC. 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SEC. 4. No preference shall be given, by law, to any creed, religious society or mode of worship; and no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent.

SEC. 5. No religious test shall be required as a qualification for any office of trust or profit.

SEC. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinion on matters of religion.

The preceding six sections guarantee religious liberty to the individual and to society.

SEC. 8. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

SEC. 9. No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right every person shall be responsible.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

SEC. 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search or seizure shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Where public welfare or interest are involved, reasonable requirements for examination of books, papers and accounts of individuals and corporations may be made. See 127 Ind. 109 and 166 Ind. 631.

SEC. 12. All courts shall be open; and every man, for injury done to him, in his person, property or reputation, shall have remedy by due course of law. Justice shall be administered freely and without purchase; completely, and without denial; speedily, and without delay.

Courts are open only to those seeking redress for injuries or wrongs. See 154 Ind. 196.

SEC. 13. In all criminal prosecutions the accused shall have the right to a public trial, by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy

thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

All reasonable rights and opportunities must be accorded the accused to prove his innocence.

SEC. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

This has reference to prosecution for the same criminal act. A person may be sued in a civil action growing out of the offense. See 156 Ind. 194 and cases cited.

SEC. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishment shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

It is largely a legislative question to determine whether a punishment is "cruel or unusual" or "proportioned to the offense." See 45 Ind. 338, 133 Ind. 404, 157 Ind. 37.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident, or the presumption strong.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

This does not prohibit the death penalty. See 7 Ind. 332 and 7 Ind. 338. The indeterminate sentence law is an attempt to carry out this section. See 149 Ind. 607.

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

The jury in criminal cases are the judges of the law governing the case as well as the facts. See 9 Ind. 541, 10 Ind. 503, and 63 Ind. 544. The court may not instruct the jury as to what evidence is necessary to convict. 137 Ind. 474.

SEC. 20. In all civil cases the right of trial by jury shall remain inviolate.

This applies only to civil cases triable by jury under the common law. See 138 Ind. 594. Many civil causes are not necessarily triable by jury, such as divorce cases, eminent domain, etc.

SEC. 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case

of the State, without such compensation first assessed and tendered.

A long line of decisions construe this section especially relating to the taking of property without just compensation. In this the rights of private property are carefully guarded. See 155 Ind. 611, 161 Ind. 251, 163 Ind. 112.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.

SEC. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Laws must have uniform application to all persons similarly situated.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contract, shall ever be passed.

An *ex post facto* law is one which makes an act unlawful which was lawful when committed, or adds to the punishment for an act or renders a conviction easier. See 152 Ind. 34.

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.

This provision unless amended, makes the initiative and referendum impossible on state laws. See 4 Ind. 342, but it does not prevent local option. See 42 Ind. 547, 174 Ind. 60 (The County Option case).

SEC. 26. The operation of the laws shall never be suspended except by the authority of the General Assembly.

SEC. 27. The privileges of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion, and then only if the public safety demand it.

A writ of *habeas corpus* is granted as a right to a person confined to be brought before the court to have the question whether he is legally detained passed upon by the court.

SEC. 28. Treason against the State shall consist only in levying war against it, and giving aid and comfort to its enemies.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

SEC. 30. No conviction shall work corruption of blood or forfeiture of estate.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together, in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

SEC. 32. The people shall have a right to bear arms for the defense of themselves and the State.

SEC. 33. The military shall be kept in strict subordination to the civil power.

SEC. 34. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

SEC. 36. Emigration from the State shall not be prohibited.

SEC. 37. There shall be neither slavery nor involuntary servitude, within the State, otherwise than for the punishment of crime, whereof the party shall have been duly convicted. No indenture of any negro or mulatto, made or executed out of the bounds of the State, shall be valid within the State.

ARTICLE II.

SUFFRAGE AND ELECTION.

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election; and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the

United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

The legislature cannot change these qualifications fixed by constitution. See 125 Ind. 281. The right to vote at elections not contemplated by the constitution, such as municipal elections, is not settled by our courts, but in many states with similar provisions the legislature has granted the right to vote for municipal officers to women.

SEC. 3. No soldier, seaman or marine, in the army or navy of the United States, or their allies, shall be deemed to have acquired a residence in this State in consequence of having been stationed within the same; nor shall any such soldier, seaman or marine, have the right to vote.

SEC. 4. No person shall be deemed to have lost his residence in the State by reason of his absence either on business of the State or of the United States.

SEC. 5. [Stricken out by constitutional amendment of March 24, 1881.]

SEC. 6. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to procure his election.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible any person convicted of an infamous crime.

SEC. 9. No person holding a lucrative office or appointment, under the United States, or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That offices in the militia, to which there is attached no annual salary, and the office of Deputy Postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative; *And provided, also*, That counties containing less than one thousand polls may confer the office of Clerk, Recorder and Auditor, or any two of said offices, upon the same person.

SEC. 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

See 122 Ind. 113 and 127 Ind. 588.

SEC. 11. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

SEC. 12. In all cases, except treason, felony and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

SEC. 13. All elections by the people shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

SEC. 14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government are divided into three separate departments: the Legislative, the Executive (including the Administrative), and the Judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another except as in this Constitution expressly provided.

See 34 Ind. 185, 4 Ind. 342, 137 Ind. 355, 127 Ind. 588 for discussion of this section.

ARTICLE IV.

LEGISLATIVE.

SECTION 1. The legislative authority of the State shall be vested in a General Assembly, which shall consist of a

Senate and House of Representatives. The style of every law shall be, "Be it enacted by the General Assembly of the State of Indiana;" and no law shall be enacted except by bill.

Every law must be styled according to this section. An attempt to make an appropriation from the State treasury by joint resolution is void. See 91 Ind. 546.

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts into which the State may, from time to time, be divided.

The membership is now fixed at the maximum, 50 Senators and 100 Representatives.

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: *Provided, however*, That the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed by lot, to the one or the other of the two classes, as to keep them as nearly equal as practicable.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years.

This enumeration was taken in 1908 and a new enumeration will be taken in 1914. The enumeration is taken by the township trustee.

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants, above twenty-one years of age, in each: *Provided*, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this Constitution.

The legislature has sole power to make apportionment, but the courts have frequently declared such apportionments void. See 144 Ind. 503, 145 Ind. 71 and 162 Ind. 568.

SEC. 6. A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

Senatorial and representative districts are either single or joint. Single districts are composed of one county although such county may have more than one member. Joint districts consist of two or more counties. If a county has more than enough population for a member or number of members and not enough for an additional member it is usually joined with a smaller county which has not enough for a single member. Thus Marion county has four Senators and is joined with Morgan and Putnam in a joint district to elect an additional Senator.

SEC. 7. No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

SEC. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

SEC. 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session.

SEC. 10. Each House, when assembled, shall choose its own officers (the President of the Senate excepted), judge the elections, qualifications and returns of its own members, determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

SEC. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing shall be entitled to no compensation from the end of the said five days, until an organization shall have been effected.

SEC. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal: *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

The legislative journal is conclusive as to the facts that appear in it. Sec 11 Ind. 424.

SEC. 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases as, in the opinion of either House, may require secrecy.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior in its presence; but such imprisonment shall not, at any time, exceed twenty-four hours.

SEC. 16. Each House shall have all powers necessary for a branch of the legislative department of a free and independent State.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other, except that bills for raising revenues shall originate in the House of Representatives.

Under a similar provision in the U. S. constitution it is held to apply to bills levying taxes and not to those incidentally creating revenue. 202 U. S. 429.

SEC. 18. Every bill shall be read by sections, on three several days in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dis-

pense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

The courts do not go behind the record to see if a bill actually passed legally. If it is authenticated by the presiding officers and signed by the governor it is a law. See 141 Ind. 281 and cases cited.

SEC. 19. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

If the title of the act fairly gives notice so as to reasonably lead to an inquiry into the body of the bill, it is all that is necessary. It need not amount to an abstract of the contents. 140 Ind. 628 and cases cited.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

This requires that the amending act refer to the title of the act to be amended and that the section be set forth as it will appear when amended. See 102 Ind. 69.

SEC. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and empaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries; except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;

In relation to interest on money;

Providing for opening and conducting elections of State, county or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.

A local act is one which applies to a particular place or which applies differently to a particular place than to the rest of the State. A special act may be local or it may attempt to apply to persons or classes differently than to the whole people.

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

SEC. 24. Provisions may be made by general law, for bringing suits against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

SEC. 25. A majority of all the members elected to each House shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective Houses.

It requires 26 Senators and 51 Representatives to pass any bill.

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect until the same shall have been published and circulated in the several counties

of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law.

The acts are printed and each clerk of the circuit court is supplied with copies for his county. When the last receipt is received from the clerks by the Secretary of State the Governor proclaims the laws in force. Emergency acts take effect the day they are signed by the Governor.

SEC. 29. The members of the General Assembly shall receive for their services a compensation, to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

Sessions are limited to sixty-one and forty days including Sundays and holidays.

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly, nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

Members of the legislature may be appointed on committees created for specific purposes as, for example, the investigation of a legislative subject. See 16 Ind. 497.

ARTICLE V.

EXECUTIVE.

SECTION 1. The executive powers of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years in any period of eight years.

SEC. 2. There shall be a Lieutenant-Governor, who shall hold his office during four years.

SEC. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the General Assembly.

SEC. 4. In voting for Governor and Lieutenant-Governor the electors shall designate for whom they vote as Governor, and for whom as Lieutenant-Governor. The returns

of every election for Governor and Lieutenant-Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant-Governor, as the case may be.

SEC. 6. Contested elections for Governor or Lieutenant-Governor shall be determined by the General Assembly, in such manner as may be prescribed by law.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant-Governor who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices who shall not have attained the age of thirty years.

SEC. 8. No member of Congress, or person holding any office under the United States, or under this State, shall fill the office of Governor or Lieutenant-Governor.

SEC. 9. The official term of the Governor or Lieutenant-Governor shall commence on the second Monday of January, in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

SEC. 10. In case of the removal of the Governor from office, or of his death, resignation or inability to discharge the duties of the office, the same shall devolve on the Lieutenant-Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant-Governor, declaring what officer then shall act as Governor; and such officer shall act accordingly until the disability be removed or a Governor be elected.

SEC. 11. Whenever the Lieutenant-Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, or to suppress insurrection, or to repel invasion.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the House in which it shall have originated, which House shall enter the objections at large upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered, and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.

Bills vetoed by the Governor after adjournment are presented to the next session, special or general, and may then be passed over his veto.

SEC. 15. The Governor shall transact all necessary business with the officers of government, and may require any information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

This section is the chief source of the Governor's power over the state administration.

SEC. 16. He shall take care that the laws be faithfully executed.

This power is dependent for its efficiency largely upon the General Assembly in giving or withholding power from the Governor in the laws.

SEC. 17. He shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the General Assembly at its next meeting, each case of reprieve, commutation or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however*, That the General Assembly, may, by law, constitute a council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly, or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any court, the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

SEC. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

The only method of filling a vacancy in the General Assembly is by an election called by the Governor.

SEC. 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

SEC. 21. The Lieutenant-Governor shall, by virtue of his office, be President of the Senate; have a right, when in Committee of the Whole, to join in debate, and to vote on all subjects, and, whenever the Senate shall be equally divided, he shall give the casting vote.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 23. The Lieutenant-Governor, while he shall act as President of the Senate, shall receive for his services the same compensation as the Speaker of the House of Representatives; and any person acting as Governor shall receive the compensation attached to the office of Governor.

SEC. 24. Neither the Governor nor Lieutenant-Governor shall be eligible to any other office during the term for which he shall have been elected.

Either might, however, be elected or appointed to an office under the United States.

ARTICLE VI.

ADMINISTRATIVE.

SECTION 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than four years in any period of six years.

The legislature cannot create other offices and transfer the duties of these officers to them. See 122 Ind. 17.

SEC. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor and Recorder shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff more than four years in any period of six years.

The term "county clerk" as sometimes used is incorrect. This section designates the office as the "clerk of the circuit court." See 9 Ind. App. 657.

SEC. 3. Such other county and township officers as may be necessary, shall be elected or appointed, in such manner as may be prescribed by law.

SEC. 4. No person shall be elected or appointed as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof during one year next preceding his appointment, if the county shall have been so long organized; but if the county

shall not have been so long organized, then within the limits of the county or counties out of which the same shall have been taken.

Any elector of a county is eligible to any office. 63 Ind. 507.

SEC. 5. The Governor, and the Secretary, Auditor and Treasurer of State, shall, severally, reside and keep the public records, books and papers, in any manner relating to the respective offices, at the seat of government.

SEC. 6. All county, township, and town officers shall reside within their respective counties, townships, and towns, and shall keep their respective offices at such places therein, and perform such duties as may be directed by law.

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

SEC. 8. All State, county, township, and town officers may be impeached, or removed from office, in such manner as may be prescribed by law.

SEC. 9. Vacancies in county, township, and town offices shall be filled in such manner as may be prescribed by law.

SEC. 10. The General Assembly may confer upon the Boards doing county business in the several counties, powers of a local administrative character.

This has reference to the boards of county commissioners which were then and are now the principal governmental agency of the county.

ARTICLE VII.

JUDICIAL.

SECTION 1. The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such other courts as the General Assembly may establish.

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five Judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

SEC. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court, and such dis-

tricts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judge shall be elected by the electors of the State at large.

SEC. 4. The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

The legislature may not deprive the court of its appellate jurisdiction, but may limit it. 157 Ind. 600.

SEC. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.

SEC. 6. The General Assembly shall provide by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution, but no judge shall be allowed to report such decision.

The decisions are prepared and published by the Reporter of the Supreme and Appellate courts, a state officer elected for four years.

SEC. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

SEC. 8. The Circuit Courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law.

SEC. 9. The State shall, from time to time, be divided into judicial circuits, and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

SEC. 10. The General Assembly may provide, by law, that the judge of one circuit may hold the courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any judge, from sickness or other cause, to hold the courts in his circuit, provision may be made, by law, for holding such courts.

SEC. 11. There shall be elected, in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for two years.

SEC. 12. Any judge or prosecuting attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

SEC. 13. The judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

This provision insures the independence of the judges.

SEC. 14. A competent number of justices of the peace shall be elected by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

SEC. 16. No person elected to any judicial office shall, during the terms for which he shall have been elected, be eligible to any office of trust or profit under the State, other than a judicial office.

SEC. 17. The General Assembly may modify or abolish the grand jury system.

SEC. 18. All criminal prosecutions shall be carried on in the name, and by the authority of the State; and the style of all processes shall be, "The State of Indiana."

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of justice; but such tribunals or other courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunal or court.

SEC. 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners whose duty it shall be to revise, simplify and abridge the rules, practice, pleadings and forms of the courts of justice. And they shall provide for abolishing the distinct forms of action at law now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said commissioners to reduce into a systematic code

the general statute law of the State; and said commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to the abridgment and amendment, as to said commissioners may seem necessary or proper. Provision shall be made by law for filling vacancies, regulating the tenure of office and the compensation of said commissioners.

This revision of the laws adopted in 1852 is the last official revision adopted. The revision of 1881 was compiled under authority of the legislature but was never adopted by the legislature. Existing compilations are private publications.

SEC. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.

This does not prohibit women from practicing law. See 134 Ind. 665.

ARTICLE VIII.

EDUCATION.

SECTION 1. Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

SEC. 2. The common school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The saline fund, and the lands belonging thereto;

The bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the

proceeds of the sales of the Swamp Lands granted to the State of Indiana by the act of Congress, of the 28th of September, 1850, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the General Assembly for Common School purposes.

Fines and forfeitures here contemplated are such as are assessed in criminal proceedings and not such penalties as may be recovered in civil actions. Thus, if a law provides that any person violating its provisions shall be liable to a penalty of $200 to be collected in a civil action, the amount does not go to the school fund. See 157 Ind. 37. For discussion of these funds, see the biennial reports of the State Superintendent of Public Instruction.

SEC. 3 The principal of the Common School Fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School Fund as have not heretofore been entrusted to the several counties; and shall make provisions, by law, for the distribution, among the several counties, of the interest thereof.

SEC. 5. If any county shall fail to demand its proportion of such interest for Common School purposes, the same shall be reinvested for the benefit of such county.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

SEC. 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

ARTICLE IX.

STATE INSTITUTIONS.

SECTION 1. It shall be the duty of the General Assembly to provide by law for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and, also, for the treatment of the Insane.

SEC. 2. The General Assembly shall provide Houses of Refuge for the correction and reformation of juvenile offenders.

SEC. 3. The County Boards shall have power to provide farms as an asylum for those persons who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

ARTICLE X.

FINANCE.

SECTION 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

A tax for State purposes must be uniform and equal throughout the State, a tax for county purposes must be uniform and equal throughout the county and a tax for township purposes must be uniform and equal throughout the township. 155 Ind. 604. This section does not prohibit license fees and taxes. 159 Ind. 300.

SEC. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the Treasury derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

SEC. 3. No money shall be drawn from the Treasury but in pursuance of appropriations made by law.

Money cannot be appropriated by joint resolution. 91 Ind. 546.

SEC. 4. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly.

See laws of Indiana 1913 pages 969 to 1005.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for public defense.

The legislature may anticipate a deficit and authorize a loan to meet it. 118 Ind. 502.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

See 166 Ind. 162.

SEC. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash & Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act passed January 29, 1847, which by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned; and no such certificates of stocks shall ever be paid by this State.

Amendment adopted February 18, 1873.

ARTICLE XI.

CORPORATIONS.

SECTION 1. The General Assembly shall not have power to establish, or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

SEC. 2. No bank shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

Since the passage of the national banking act, State banks have not been permitted to issue paper credits to circulate as money.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

SEC. 6. The stockholders in every bank, or banking company, shall be individually responsible to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

SEC. 7. All bills or notes issued as money, shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals loaning money.

SEC. 10. Every bank, or banking company, shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter to close its business.

SEC. 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in

case of such investment, the safety of the same shall be guaranteed by unquestionable security.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association, or corporation, nor shall the State hereafter become a stockholder in any corporation or association.

SEC. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

SEC. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

ARTICLE XII.

MILITIA.

SECTION 1. The militia shall consist of all able-bodied white male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster and Commissary Generals.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

SEC. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions and companies, and fix the rank of all staff officers.

SEC. 5. The militia may be divided into classes of sedentary and active militia in such manner as shall be prescribed by law.

SEC. 6. No person conscientiously opposed to bearing arms shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

ARTICLE XIII.

POLITICAL AND MUNICIPAL CORPORATIONS.

SECTION 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, to any amount, in the aggregate exceeding two per centum on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, and all bonds or obligations, in excess of such amount, given by such corporations, shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.

Amendment of March 24, 1881.

The civil city and the school city are distinct corporations under this section and each may become indebted to an amount equal to two per cent. of their assessed valuation. See 161 Ind. 44, 155 Ind. 186.

ARTICLE XIV.

BOUNDARIES.

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio River, from the mouth of the Great Miami River to the mouth of the Wabash River; on the west, by a line drawn along the middle of the Wabash River, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash River; and thence by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by said east and west line, until the same shall intersect the first-mentioned meridian line, which forms the western boundary of the State of Ohio.

SEC. 2. The State of Indiana shall possess jurisdiction, and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction,

in civil and criminal cases, with the State of Kentucky on the Ohio River, and with the State of Illinois on the Wabash River, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE XV.

MISCELLANEOUS.

SECTION 1. All officers whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.

Four year term provisions applies to park commissioners. 151 Ind. 679. Does not apply to policemen. 158 Ind. 242.

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

An officer who has held an office the full limit allowed by the constitution cannot hold over. 128 Ind. 480.

SEC. 4. Every person elected or appointed to any office under this Constitution shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of this State and of the United States, and also an oath of office.

SEC. 5. There shall be a seal of the State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed by the State Seal, and attested by the Secretary of State.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county under that area be further reduced.

SEC. 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed.

SEC. 9. The following grounds owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven as lies north of the arm of the Central Canal, shall not be sold or leased.

SEC. 10. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals and referred to the General Assembly to be chosen at the next general election; and, if in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State, and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

An amendment must receive a majority of all the votes cast at the election, and not merely a majority of the votes cast for or against the amendment. 156 Ind. 104.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while such an amendment or amendments which shall have been agreed upon by one General Assembly shall be awaiting the action of the succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

Constitution of the United States

1787

PREAMBLE.

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

"The value of the preamble to a constitution for purposes of construction is similar to that given to the preamble of an ordinary statute. It may not be relied upon for giving to the body of the instrument a meaning other than that which its language plainly imports, but may be resorted to in cases of ambiguity when the intention of the framers does not clearly and definitely appear. As Story says: 'The preamble of a statute is a key to open the mind of the makers as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the statute.'" Willoughby, Constitutional Law of U. S., p. 35.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The number of Representatives under the apportionment of 1910 is 435 (one for each 212,407 people).

The number of Senators is now 96 (two for each State).

All powers entrusted to government are divided into three grand departments, the executive, legislative and judicial, and the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined and that the persons entrusted with power in any of these branches shall not be permitted to encroach upon the powers confided to others. See Kilbourne v. Thompson, 103 U. S. 168.

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years

a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Direct taxes must be apportioned among the States according to population as defined. Pollock v. Farmers Loan Co., 158 U. S. 601. This was the famous income tax case which decided that an income tax is a direct tax and hence unconstitutional because not apportioned according to population. The constitution was amended in 1913 to permit collection of an income tax by the federal government. See 16th amendment, p. 52.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

Amendment adopted 1913.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one

third may be chosen every second year. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to effect the election or term of any Senator chosen before it becomes valid as part of the constitution.

Amendment adopted 1913.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SEC. 4. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Congress may make rules for federal elections and prescribe duties of officers acting under state laws and prescribe penalties for violation of the laws of Congress. See 110 U. S. 651.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

A Congress thus, does not convene for more than a year after their election unless called in special session.

SEC. 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SEC. 7. All bills for raising revenues shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

This applies to bills levying taxes and not to those incidentally creating revenue. 202 U. S. 429.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with

his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

When an enrolled bill is signed by the proper officers of each house and is approved by the President and filed in the Department of State it is conclusive that it was properly passed. 143 U. S. 649.

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Direct taxes are apportioned among the States according to population. See section 2, article I.

To borrow money on the credit of the United States;

United States treasury notes are legal tender in payment of debts. 12 Wall (U. S.) 457, 13 Wall 604 and 110 U. S. 421.

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

This is the famous interstate commerce clause of the constitution. Thousands of decisions construe this section. As early as 1898 over 1,600 cases had been decided in the state and federal courts on this subject.

Commerce under this section includes commodities tangible or ponderable and intangible or imponderable including telegraph and telephone messages. 96 U. S. 1.

The communications passing between a correspondence school and its pupils are interstate commerce. 217 U. S. 91.

Transportation is necessary to commerce. 95 U. S. 1.

Insurance is not commerce. 119 U. S. 110.

Sending of lottery tickets from one State to another is subject to regulation of congress. 188 U. S. 321.

So long as the commodity is kept in the unbroken or original package it is not subject to State regulation. 125 U. S. 465; 135 U. S. 100; 171 U. S. 1.

There is no limit fixed by the constitution or the courts to the powers granted by this section. It is in fact being extended to cases not contemplated by the framers.

This section was evidently intended to make commerce free from the restrictions of the States but as the court remarks, "The reasons which may have caused the framers of the constitution to repose power to regulate interstate commerce in Congress do not affect or limit the extent of the power itself."

Under the so-called Webb law enacted this year (1913) shipments of liquor into dry States are subject to State laws as soon as they cross the border. The constitutionality of this law will be tested.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

These powers are exclusively in Congress. 2 Wheat (U. S.) 259. See also 186 U. S. 181.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

Congress has power to regulate what shall be carried in the mails. 96 U. S. 727; 194 U. S. 497.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

The U. S. circuit courts, circuit courts of appeal and court of claims and other courts are established under this provision.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

The fear of a standing army caused this limitation.

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

The land forces consist of the U. S. standing army, which is at all times in service, and the national guard of the States, which is in service only when called and which is supported jointly by the States and the United States and is subject to call by the State or the United States.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;

The District of Columbia is governed under this provision.

And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

This provision is of the greatest importance in granting a broad authority to do things "necessary and proper" to carry out the Constitution. Congress must determine what is necessary and proper but the Supreme Court is, under present interpretations, the ultimate judge.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The slave trade was prohibited under this provision.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

See 102 U. S. 586 and 158 U. S. 601. See note, Art. 1, Sec. 2.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

The provision which is most prominent here is that prohibiting States from passing laws "impairing the obligation of contracts." A law cannot be passed which impairs a contract entered into before the law was passed. It is the intent that two parties entering into a contract shall be governed by the law in force when the contract was made. But contracts which affect the safety and welfare of the public are within the supervising power of the Legislature when exercised to protect the public safety, health or morals. 170 U. S. 57.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

See amendment No. 12, p. 49.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

The States have the power to determine the method of choosing electors. This may be by election or appointment or election by districts or otherwise, but Congress determines the time of appointment and the place of meeting. 146 U. S. 1. In all States the electors are now chosen by ballot at the regular election every four years.

No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The law fixes the succession in case of disability of both President and Vice-President in the following order: Secretary of State, Secretary of Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SEC. 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

The appointing power of the President is enormous, but he has been relieved somewhat by the civil service law which provides for filling most of the subordinate positions through competitive examination.

Treaties made under the authority of the Constitution control inconsistent provisions of State Constitutions and Legislatures. 100 U. S. 483.

SEC. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully

executed, and shall commission all the officers of the United States.

Messages to Congress have been written documents read to the two houses for more than one hundred years. President Washington read his messages in person. President Wilson has adopted that plan also for important messages.

SEC. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Impeachment consists in the preferring of charges by the House of Representatives. The trial is had by the Senate. See sections 2 and 3 of Article I.

ARTICLE III.

SECTION 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

The inferior courts consist of the district court, the circuit court of appeals, court of claims and special courts such as the court of patent appeals, etc.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

This provision applies only when questions arise in courts which bring such acts, records or proceedings in issue. 194 U. S. 48.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

The privileges and immunities of citizens of the United States are such as arise out of the nature and essential character of the federal government. 16 Wall (U. S.) 36.

But this does not guarantee the rights in a State which a person may have in another State. See 153 U. S. 684.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or

parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

For the discussion of the right to take and govern foreign territory, see Dorr v. U. S. 195 U. S. 138, (one of the so-called Insular cases) and cases cited.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

What constitutes a republican form of government? See 7 Wall (U. S.) 700.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

The constitution has been amended seventeen times from 1789 to 1913.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the

United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Treaties made under authority of the Constitution control conflicting provisions of State Constitutions and laws. 100 U. S. 483.

ARTICLE VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

ARTICLES IN AMENDMENT OF THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The first ten amendments were adopted in 1790 in fulfilment of a demand for a bill of rights. They apply to the national government and limit its powers but do not restrict the power of the States with respect to its people. 194 U. S. 445 and cases cited.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The provision of the Indiana Constitution is an exact copy of this article.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

When the laws operate on all alike and do not subject an individual to an arbitrary exercise of the powers of government, due process of law and the equal protection of the laws are secured. 194 U. S. 618. When the federal government appropriates property there is an implied contract that it will pay the value thereof. 188 U. S. 445.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Congress cannot deprive persons in territories of the right of trial by jury of twelve persons. 197 U. S. 516.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall

be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The infliction of different penalties on persons jointly charged with a crime does not make the greater punishment cruel and unusual. 191 U. S. 126.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States, respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

This amendment was adopted in 1792 to prevent citizens of one State from suing another sovereign State. 2 Dall (U. S.) 419.

ARTICLE XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Sen-

ate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

This amendment was adopted in 1803 to correct the defects found to exist in the original provision for the election of President and Vice-President.

The electors meet on the second Monday in January after their election.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. *Power to enforce prohibition.* Congress shall have power to enforce this article by appropriate legislation.

The thirteenth, fourteenth and fifteenth amendments were the result of the Civil War. They were intended to free and protect the slaves.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The fifth amendment of similar import restricts the powers of the federal government. The fourteenth restricts the powers of the States. The fourteenth amendment operates solely on States and not on individuals. 203 U. S. 1.

The fourteenth amendment has come to be the most important restriction in the Constitution. Some of the more important cases are 169 U. S. 366; 198 U. S. 45; 194 U. S. 445; 203 U. S. 151; 208 U. S. 412. The latter is the famous Oregon case in which the court upheld the right of the State to limit the hours of labor of women. The word person in this section has come to be held to include corporations.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The fifteenth amendment does not grant the right of suffrage but prevents the States from discriminating on account of race, color, or previous condition of servitude. 110 U. S. 651. See also, 203 U. S. 1.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

This amendment was ratified in 1913.

ARTICLE XVII.

See section 3 of Art. I.

CONSTITUTION

OF

INDIANA

AND OF THE

UNITED STATES

WITH BRIEF NOTES AND ANNOTATIONS

Issued by the
INDIANA BUREAU OF LEGISLATIVE INFORMATION

April, 1917
INDIANAPOLIS

CONSTITUTION

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WITH

Brief Notes and Annotations

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JOHN A LAPP,
DIRECTOR

INTRODUCTION

Under the provisions of the act calling a constitutional convention the Bureau of Legislative Information was directed to prepare and have published twenty thousand copies of the Constitution of Indiana to distribute for educational purposes. To this has been added the Constitution of the United States because of the necessity of construing these instruments together.

The Bureau is also directed by the act to prepare from time to time information which may be of use to the delegates to the constitutional convention and the public generally. Persons desiring such information as may be published will upon request be placed upon the mailing list of the Bureau.

JOHN A. LAPP, Director.

Constitution of the State of Indiana

1851

PREAMBLE

To the end that justice be established, public order maintained, and liberty perpetuated: We, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have at all times an indefeasible right to alter and reform their government.

The theory upon which our institutions rest is, "that all men have certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one and that in the protection of these rights all are equal before the law." Cummings v. State of Missouri, 4 Wallace (U. S.) 277.

SEC. 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SEC. 4. No preference shall be given, by law, to any creed, religious society or mode of worship; and no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent.

SEC. 5. No religious test shall be required as a qualification for any office of trust or profit.

SEC. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinion on matters of religion.

The preceding six sections guarantee religious liberty to the individual and to society.

SEC. 8. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

SEC. 9. No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right every person shall be responsible.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

SEC. 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search or seizure shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Where public welfare or interest are involved, reasonable requirements for examination of books, papers and accounts of individuals and corporations may be made. See 127 Ind. 109 and 166 Ind. 631.

SEC. 12. All courts shall be open; and every man, for injury done to him, in his person, property or reputation,

shall have remedy by due course of law. Justice shall be administered freely and without purchase; completely, and without denial; speedily, and without delay.

Courts are open only to those seeking redress for injuries or wrongs. See 154 Ind. 196.

SEC. 13. In all criminal prosecutions the accused shall have the right to a public trial, by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

All reasonable rights and opportunities must be accorded the accused to prove his innocence.

SEC. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

This has reference to prosecution for the same criminal act. A person may be sued in a civil action growing out of the offense. See 156 Ind. 194 and cases cited.

SEC. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishment shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

It is largely a legislative question to determine whether a punishment is "cruel or unusual" or "proportioned to the offense." See 45 Ind. 338, 133 Ind. 404, 157 Ind. 37.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident, or the presumption strong.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

This does not prohibit the death penalty. See 7 Ind. 332 and 7 Ind. 338. The indeterminate sentence law is an attempt to carry out this section. See 149 Ind. 607.

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

The jury in criminal cases are the judges of the law governing the case as well as the facts. See 9 Ind. 541, 10 Ind. 503, and 63 Ind. 544. The court may not instruct the jury as to what evidence is necessary to convict. 137 Ind. 474.

SEC. 20. In all civil cases the right of trial by jury shall remain inviolate.

This applies only to civil cases triable by jury under the common law. See 138 Ind. 594. Many civil causes are not necessarily triable by jury, such as divorce cases, eminent domain, etc.

SEC. 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

A long line of decisions construe this section especially relating to the taking of property without just compensation. In this the rights of private property are carefully guarded. See 155 Ind. 611, 161 Ind. 251, 163 Ind. 112.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.

SEC. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Laws must have uniform application to all persons similarly situated.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contract, shall ever be passed.

An *ex post facto* law is one which makes an act unlawful which was lawful when committed, or adds to the punishment for an act or renders a conviction easier. See 152 Ind. 34.

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.

This provision unless amended makes the initiative and referendum impossible on state laws. See 4 Ind. 342, but it does not prevent local option. See 42 Ind. 547, 174 Ind. 60 (The county option case).

SEC. 26. The operation of the laws shall never be suspended except by the authority of the General Assembly.

SEC. 27. The privileges of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion, and then only if the public safety demand it.

A writ of *habeas corpus* is granted as a right to a person confined to be brought before the court to have the question whether he is legally detained passed upon by the court.

SEC. 28. Treason against the State shall consist only in levying war against it, and giving aid and comfort to its enemies.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

SEC. 30. No conviction shall work corruption of blood or forfeiture of estate.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together, in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

SEC. 32. The people shall have a right to bear arms for the defense of themselves and the State.

SEC. 33. The military shall be kept in strict subordination to the civil power.

SEC. 34. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

SEC. 36. Emigration from the State shall not be prohibited.

SEC. 37. There shall be neither slavery nor involuntary servitude, within the State, otherwise than for the punishment of crime, whereof the party shall have been duly convicted. No indenture of any negro or mulatto, made or executed out of the bounds of the State, shall be valid within the State.

ARTICLE II.

SUFFRAGE AND ELECTION.

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election; and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

The legislature cannot change these qualifications fixed by constitution. See 125 Ind. 281. The constitution does not permit women to vote. See 148 Ind. 38. The right to vote at elections not contemplated by the constitution, such as municipal elections, is not settled by our courts, but in many states with similar provisions the legislature has granted the right to vote for municipal officers to women.

SEC. 3. No soldier, seamen or marine, in the army or navy of the United States, or their allies, shall be deemed to have acquired a residence in this State in consequence of having been stationed within the same; nor shall any such soldier, seamen or marine, have the right to vote.

SEC. 4. No person shall be deemed to have lost his residence in the State by reason of his absence either on business of the State or of the United States.

SEC. 5. [Stricken out by constitutional amendment of March 24, 1881].

SEC. 6. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to procure his election.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible any person convicted of an infamous crime.

SEC. 9. No person holding a lucrative office or appointment, under the United States, or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That offices in the militia, to which there is attached no annual salary, and the office of Deputy Postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative; *And provided, also* That counties containing less than one thousand polls may confer the office of Clerk, Recorder and Auditor, or any two of said offices, upon the same person.

SEC. 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

See 122 Ind. 113 and 127 Ind. 588.

SEC. 11. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

SEC. 12. In all cases, except treason, felony and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

SEC. 13. All elections by the people shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

SEC. 14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government are divided into three separate departments: the Legislative, the Executive (including the Administrative), and the Judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another except as in this Constitution expressly provided.

See 34 Ind. 185, 4 Ind. 342, 137 Ind. 355, 127 Ind. 588 for discussion of this section.

ARTICLE IV.

LEGISLATIVE.

SECTION 1. The legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives. The style of every law shall be, "Be it enacted by the General Assembly of the State of Indiana;" and no law shall be enacted except by bill.

Every law must be styled according to this section. An attempt to make an appropriation from the State treasury by joint resolution is void. See 91 Ind. 546.

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts into which the State may, from time to time, be divided.

The membership is now fixed at the maximum, 50 Senators and 100 Representatives.

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: *Provided, however,* That the senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed by lot, to the one or the other of the two classes, as to keep them as nearly equal as practicable.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years.

This enumeration was taken in 1914 and a new enumeration will be taken in 1920. The enumeration is taken by the township trustee.

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants, above twenty-one years of age, in each: *Provided*, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this Constitution.

The legislature has sole power to make apportionment, but the courts have frequently declared such apportionments void. See 144 Ind. 503, 145 Ind. 71 and 162 Ind. 568.

SEC. 6. A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

Senatorial and representative districts are either single or joint. Single districts are composed of one county although such county may have more than one member. Joint districts consist of two or more counties. If a county has more than enough population for a member or number of members and not enough for an additional member it is usually joined with a smaller county which has not enough for a single member. Thus Marion county has four Senators and is joined with Morgan and Putnam in a joint district to elect an additional Senator.

SEC. 7. No person shall be a Senator or a Representative who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

SEC. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the General

Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

SEC. 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session.

SEC. 10. Each House, when assembled, shall choose its own officers (the President of the Senate excepted), judge the elections, qualifications and returns of its own members, determine its rules of proceeding and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

SEC. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing shall be entitled to no compensation from the end of the said five days, until an organization shall have been effected.

SEC. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal: *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

The legislative journal is conclusive as to the facts that appear in it. See 11 Ind. 424.

SEC. 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases as, in the opinion of either House, may require secrecy.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior in its presence; but such imprisonment shall not, at any time, exceed twenty-four hours.

SEC. 16. Each House shall have all powers necessary for a branch of the legislative department of a free and independent State.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other, except that bills for raising revenues shall originate in the House of Representatives.

Under a similar provision in the U. S. constitution it is held to apply to bills levying taxes and not to those incidentally creating revenue. 202 U. S. 429.

SEC. 18. Every bill shall be read by sections, on three several days in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

The courts do not go behind the record to see if a bill actually passed legally. If it is authenticated by the presiding officers and signed by the governor it is a law. See 141 Ind. 281 and cases cited.

SEC. 19. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced

in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

If the title of the act fairly gives notice so as to reasonably lead to an inquiry into the body of the bill, it is all that is necessary. It need not amount to an abstract of the contents. 140 Ind. 628 and cases cited.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

This requires that the amending act refer to the title of the act to be amended and that the section be set forth as it will appear when amended. See 162 Ind. 69.

SEC. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and empaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and twonship officers, and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries; except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required:

In relation to interest on money;

Providing for opening and conducting elections of State, county or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.

A local act is one which applies to a particulxr place or which applies differently to a particular place than to the rest of the State. A special act may be local or it may attempt to apply to persons or classes differently than to the whole people.

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

SEC. 24. Provisions may be made by general law, for bringing suits against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

SEC. 25. A majority of all the members elected to each House shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective Houses.

It requires 26 Senators and 51 Representatives to pass any bill.

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law.

The acts are printed and each clerk of the circuit court is supplied with copies for his county. When the last receipt is received from the clerks by the Secretary of State, the Governor proclaims the laws in force. Emergency acts take effect the day they are signed by the Governor.

SEC. 29. The members of the General Assembly shall receive for their services a compensation, to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

Sessions are limited to sixty-one and forty days including Sundays and holidays.

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly, nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

Members of the legislature may be appointed on committees created for specific purposes as, for example, the investigation of a legislative subject. See 16 Ind. 497.

ARTICLE V.

EXECUTIVE.

SECTION 1. The executive powers of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years in any period of eight years.

SEC. 2. There shall be a Lieutenant-Governor, who shall hold his office during four years.

SEC. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the General Assembly.

SEC. 4. In voting for Governor and Lieutenant-Governor the electors shall designate for whom they vote as Governor, and for whom as Lieutenant-Governor. The returns of every election for Governor and Lieutenant-Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant-Governor, as the case may be.

SEC. 6. Contested elections for Governor or Lieutenant-Governor shall be determined by the General Assembly, in such manner as may be prescribed by law.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant-Governor who shall not have been five years a citizen of the Unites States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices who shall not have attained the age of thirty years.

SEC. 8. No member of Congress, or person holding any office under the United States, or under this State, shall fill the office of Governor or Lieutenant-Governor.

SEC. 9. The official term of the Governor or Lieutenant-Governor shall commence on the second Monday of January.

in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

SEC. 10. In case of the removal of the Governor from office, or of his death, resignation or inability to discharge the duties of the office, the same shall devolve on the Lieutenant-Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability both of the Governor and Lieutenant-Governor declaring what officer then shall act as Governor; and such officer shall act accordingly until the disability be removed or a Governor be elected.

SEC. 11. Whenever the Lieutenant-Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, or to suppress insurrection, or to repel invasion.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the House in which it shall have originated, which House shall enter the objections at large upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered, and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been pre-

sented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.

Bills vetoed by the Governor after adjournment are presented to the next session, special or general, and may then be passed over his veto.

SEC. 15. The Governor shall transact all necessary business with the officers of government, and may require any information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

This section is the chief source of the Governor's power over the state administration.

SEC. 16. He shall take care that the laws be faithfully executed.

This power is dependent for its efficieny largely upon the General Assembly in giving or withholding power from the Governor in the laws.

SEC. 17. He shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the General Assembly at its next meeting, each

case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however*, That the General Assembly, may, by law, constitute a council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly, or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any court, the Governor shall fill such vacancy by appointment, which shall expire when a successor sha l have been elected and qualified.

SEC. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

The only method of filling a vacancy in the General Assembly is by an election called by the Governor.

SEC. 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

SEC. 21. The Lieutenant-Governor shall, by virtue of his office, be President of the Senate; have a right, when in Committee of the Whole, to join in debate, and to vote on all subjects, and, whenever the Senate shall be equally divided, he shall give the casting vote.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 23. The Lieutenant-Governor, while he shall act as President of the Senate, shall receive for his services the same compensation as the Speaker of the House of Representatives; and any person acting as Governor shall receive the compensation attached to the office of Governor.

SEC. 24. Neither the Governor nor Lieutenant-Governor shall be eligible to any other office during the term for which he shall have been elected.

Either might, however, be elected or appointed to an office under the United States.

ARTICLE VI.

ADMINISTRATIVE.

SECTION 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than four years in any period of six years.

The legislature cannot create other offices and transfer the duties of these officers to them. See 122 Ind. 17.

SEC. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner and Surveyor. The Clerk, Auditor and Recorder shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff more than four years in any period of six years.

The term "county clerk" as sometimes used is incorrect. This section designates the office as the "clerk of the circuit court." See 9 Ind. App. 657.

SEC. 3. Such other county and township officers as may be necessary, shall be elected or appointed, in such manner as may be prescribed by law.

SEC. 4. No person shall be elected or appointed as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof

during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties out of which the same shall have been taken.

Any elector of a county is eligible to any office. 63 Ind. 507.

SEC. 5. The Governor, and the Secretary, Auditor and Treasurer of State, shall severally, reside and keep the public records, books and papers, in any manner relating to the respective offices, at the seat of government.

SEC. 6. All county, township, and town officers shall reside within their respective counties, townships, and towns, and shall keep their respective offices at such places therein, and perform such duties as may be directed by law.

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

SEC. 8. All state, county, township, and town officers may be impeached, or removed from office, in such manner as may be prescribed by law.

SEC. 9. Vacancies in county, township, and town offices shall be filled in such manner as may be prescribed by law.

SEC. 10. The General Assembly may confer upon the Boards doing county business in the several counties, powers of a local administrative character.

This has reference to the boards of county commissioners which were then and are now the principal governmental agency of the county.

ARTICLE VII.

JUDICIAL.

SECTION 1. The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such other courts as the General Assembly may establish.

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five Judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

SEC. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court, and such districts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judge shall be elected by the electors of the State at large.

SEC. 4. The Supreme Court shall have jurisdiction, coextensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

The legislature may not deprive the court of its appellate jurisdiction, but may limit it. 157 Ind. 600.

SEC. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decisions of the Court thereon.

SEC. 6. The General Assembly shall provide by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution, but no judge shall be allowed to report such decision.

The decisions are prepared and published by the Reporter of the Supreme and Appellate courts, a state officer elected for four years.

SEC. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

SEC. 8. The Circuit Courts shall each consist of one judge and shall have such civil and criminal jurisdiction as may be prescribed by law.

SEC. 9. The State shall, from time to time, be divided into judicial circuits, and a judge for each circuit shall be elected by the voters therof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

SEC. 10. The General Assembly may provide, by law, that the judge of one circuit may hold the courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any judge, from sickness or other cause, to hold the courts in his circuit, provision may be made, by law, for holding such courts.

SEC. 11. There shall be elected, in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for two years.

SEC. 12. Any judge or prosecuting attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

SEC. 13. The judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

This provision insures the independence of the judges.

SEC. 14. A competent number of justices of the peace shall be elected by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

SEC. 16. No person elected to any judicial office shall during the terms for which he shall have been elected, be eligible to any office of trust or profit under the State, other than a judicial office.

SEC. 17. The General Assembly may modify or abolish the grand jury system.

SEC. 18. All criminal prosecutions shall be carried on in the name, and by the authority of the State; and the style of all processes shall be, "The State of Indiana."

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of justice; but such tribunals or other courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunal or court.

SEC. 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners whose duty it shall be to revise, simplify and abridge the rules, practice, pleadings and forms of the courts of justice. And they shall provide for abolishing the distinct forms of action at law now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said commissioners to reduce into a systematic code the general statute law of the State; and said commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to the abridgement and amendment, as to said commissioners may seem necessary or proper. Provision shall be made by law for filling vacancies, regulating the tenure of office and the compensation of said commissioners.

This revision of the laws adopted in 1852 is the last official revision adopted. The revision of 1881 was compiled under authority of the legislature but was never adopted by the legislature. Existing compilations are private publications.

SEC. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.

This does not prohibit women from practicing law. See 134 Ind. 665.

ARTICLE VIII.

EDUCATION.

SECTION 1. Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

SEC. 2. The common school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The saline fund, and the lands belonging thereto;

The bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the State, where no special purpose is expressed in the grant and the proceeds of the sales thereof; including the proceeds of the sales of the Swamp Lands granted to the State of Indiana by the act of Congress, of the 28th of September, 1850, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the General Assembly for Common School purposes.

Fines and forfeitures here contemplated are such as are assessed in criminal proceedings and not such penalties as may be recovered in civil actions. Thus, if a law provides that any person violating

its provisions shall be liable to a penalty of $200 to be collected in a civil action, the amount does not go to the school fund. See 157 Ind. 37. For discussion of these funds, see the biennial reports of the State Superintendent of Public Instruction.

SEC. 3. The principal of the Common School Fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School Fund as have not heretofore been entrusted to the several counties; and shall make provisions, by law, for the distribution, among the several counties, of the interest thereof.

SEC. 5. If any county shall fail to demand its proportion of such interest for Common School purposes, the same shall be reinvested for the benefit of such county.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

SEC. 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law

ARTICLE IX.

STATE INSTITUTIONS.

SECTION 1. It shall be the duty of the General Assembly to provide by law for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and, also, for the treatment of the Insane.

SEC. 2. The General Assembly shall provide Houses of Refuge for the correction and reformation of juvenile offenders.

SEC. 3. The County Boards shall have power to provide farms as an asylum for those persons who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

ARTICLE X.

FINANCE.

SECTION 1. The General Assembly shall provide, by law for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

A tax for State purposes must be uniform and equal throughout the State, a tax for county purposes must be uniform and equal throughout the county and a tax for township purposes must be uniform and equal throughout the township. 155 Ind. 604. This section does not prohibit license fees and taxes. 159 Ind. 300.

SEC. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the Treasury derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

SEC. 3. No money shall be drawn from the Treasury but in pursuance of appropriations made by law.

Money cannot be appropriated by joint resolution. 91 Ind. 546.

SEC. 4. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly.

See laws of Indiana 1915 pages 698 to 741.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for public defense.

The legislature may anticipate a deficit and authorize a loan to meet it. 118 Ind. 502.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

See 166 Ind. 162.

SEC. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash & Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act passed January 29, 1847, which by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned; and no such certificates of stocks shall ever be paid by this State.

Amendment adopted February 18, 1873.

ARTICLE XI.

CORPORATIONS.

SECTION 1. The General Assembly shall not have power to establish, or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

SEC. 2. No bank shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

Since the passage of the national banking act, State banks have not been permitted to issue paper credits to circulate as money.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

SEC. 6. The stockholders in every bank, or banking company, shall be individually responsible to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

SEC. 7. All bills or notes issued as money, shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals loaning money.

SEC. 10. Every bank, or banking company, shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter to close its business.

SEC. 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association, or corporation, nor shall the State hereafter become a stockholder in any corporation or association.

SEC. 13. Corporations, other than banking, shall not be created by special acts but may be formed under general laws.

SEC. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

ARTICLE XII.

MILITIA.

SECTION 1. The militia shall consist of all able-bodied white male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster and Commissary Generals.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

SEC. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions and companies, and fix the rank of all staff officers.

SEC. 5. The militia may be divided into classes of sedentary and active militia in such manner as shall be prescribed by law.

SEC. 6. No person conscientiously opposed to bearing arms shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

ARTICLE XIII.

POLITICAL AND MUNICIPAL CORPORATIONS.

SECTION 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, to any amount, in the aggregate exceeding two per centum on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount, given by such corporations, shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.

Amendment of March 24, 1881.

The civil city and the school city are distinct corporation under this section and each may become indebted to an amount equal to two per cent. of their assessed valuation. See 161 Ind. 44. 155 Ind. 186.

ARTICLE XIV.

BOUNDARIES.

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio River, from the mouth of the Great Miami River to the mouth of the Wabash River; on the west, by a line drawn along the middle of the Wabash River, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash River; and thence by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

SEC. 2. The State of Indiana shall possess jurisdiction, and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio River, and with the State of Illinois on the Wabash River, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE XV.

MISCELLANEOUS.

SECTION 1. All officers whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if

not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.

Four year term provisions applies to park commissioners. 151 Ind. 679. Does not apply to policemen. 158 Ind. 242.

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

An officer who has held an office the full limit allowed by the constitution cannot hold over. 128 Ind. 480.

SEC. 4. Every person elected or appointed to any office under this Constitution shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of this State and of the United States, and also an oath of office.

SEC. 5. There shall be a seal of the State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed by the State Seal, and attested by the Secretary of State.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county under that area be further reduced.

SEC. 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed.

SEC. 9. The following grounds owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven as lies north of the arm of the Central Canal shall not be sold or leased.

SEC. 10. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals and referred to the General Assembly to be chosen at the next general election; and, if in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State, and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

An amendment must receive a majority of all the votes cast at the election, and not merely a majority of the votes cast for or against the amendment. 156 Ind. 104.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while such an amendment or amendments which shall have been agreed upon by one General Assembly shall be awaiting the action of the succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

Constitution of the United States

1787

PREAMBLE.

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

"The value of the preamble to a constitution for purposes of construction is similar to that given to the preamble of an ordinary statute. It may not be relied upon for giving to the body of the instrument a meaning other than that which its language plainly imports, but may be resorted to in cases of ambiguity when the intention of the framers does not clearly and definitely appear. As Story says: 'The preamble of a statute is a key to open the mind of the makers as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the statute.'" Willoughby, Constitutional Law of U. S., p. 35.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The number of Representatives under the apportionment of 1910 is 435 (one for each 212,407 people).

The number of Senators is now 96 (two for each State).

All powers entrusted to government are divided into three grand departments, the executive, legislative and judicial, and the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined and that the persons entrusted with power in any of these branches shall not be permitted to encroach upon the powers confided to others. See Kilbourne v. Thompson, 103 U. S. 168.

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the

several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Direct taxes must be apportioned among the States according to population as defined. Pollock v. Farmers Loan Co., 158 U. S. 601. This was the famous income tax case which decided that an income tax is a direct tax and hence unconstitutional because not apportioned according to population. The constitution was amended in 1913 to permit collection of an income tax by the federal government. See 16th amendment, p. 60.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

Amendment adopted 1913.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the constitution.

Amendment adopted 1913.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on

oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SEC. 4. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Congress may make rules for federal elections and prescribe duties of officers acting under state laws and prescribe penalties for violation of the laws of Congress. See 110 U. S. 651.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

A Congress thus, does not convene for more than a year after their election unless called in special session.

SEC. 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall,

at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SEC. 7. All bills for raising revenues shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

This applies to bills levying taxes and not to those incidentally creating revenue. 202 U. S. 429.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved

by two-thirds of that House, it shall be come a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment prevent its return in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

When an enrolled bill is signed by the proper officers of each house and is approved by the President and filed in the Department of State it is conclusive that it was properly passed. 143 U. S. 649.

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Direct taxes are apportioned among the States according to population. See section 2, article I.

To borrow money on the credit of the United States;

Unites State Treasury notes are legal tender in payment of debts. 12 Wall (U. S.) 457, 13 Wall. 604 and 110 U. S. 421.

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

This is the famous interstate commerce clause of the Constitution. Thousands of decisions construe this section. As early as 1898 over 1,600 cases had been decided in the state and federal courts on this subject.

Commerce under this section includes commodities tangible or ponderable and intangible or imponderable including telegraph and telephone messages. 96 U. S. 1.

The communications passing between a correspondence school and its pupils are interstate commerce. 217 U. S. 91.

Transportation is necessary to commerce. 95 U. S. 1.

Insurance is not commerce. 119 U. S. 110.

Sending of lottery tickets from one State to another is subject to regulation of Congress. 188 U. S. 321.

So long as the commodity is kept in the unbroken or original package it is not subject to State regulation. 125 U. S. 465; 135 U. S. 100; 171 U. S. 1.

There is no limit fixed by the constitution or the courts to the powers granted by this section. It is in fact being extended to cases not contemplated by the framers.

This section was evidently intended to make commerce free from the restrictions of the States but as the court remarks. "The reasons which may have caused the framers of the constitution to repose power to regulate interstate commerce in Congress do not affect or limit the extent of the power itself."

Under the so-called Webb law enacted in 1913, shipments of liquor into dry States are subject to State laws as soon as they cross the border. This act has been upheld by the U. S. Supreme Court.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

These powers are exclusively in Congress. 2 Wheat (U. S.) 259. See also 186 U. S. 181.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

Congress has power to regulate what shall be carried in the mails. 96 U. S. 727; 194 U. S. 497.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

The U. S. circuit courts, circuit courts of appeal and court of claims and other courts are established under this provision.

To define and punish piracies and felonies committed on the on high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

The fear of a standing army caused this limitation.

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for the governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

The land forces consist of the U. S. standing army, which is at all times in service, and the national guard of the States, which is in service only when called and which is supported jointly by the States and the United States and is subject to call by the State or the United States.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;

The District of Columbia is governed under this provision.

And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all

other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

This provision is of the greatest importance in granting a broad authority to do things "necessary and proper" to carry out the Constitution. Congress must determine what is necessary and proper but the Supreme Court is, under present interpretations, the ultimate judge.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The slave trade was prohibited under this provision.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

See 102 U. S. 586 and 158 U. S. 601. See note, Art. I, Sec. 2.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under

them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

The provision which is most prominent here is that prohibiting States from passing laws "impairing the obligations of contracts." A law cannot be passed which impairs a contract entered into before the law was passed. It is the intent that two parties entering into a contract shall be governed by the law in force when the contract was made. But contracts which affect the safety and welfare of the public are within the supervising power of the Legislature when exercised to protect the public safety, health or morals. 170 U. S. 57.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to

the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representatives, or person holding an office of trust or profit under the United States, shall be appointed an elector.

See amendment No. 12, p. 53.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

The States have the power to determine the method of choosing electors. This may be by election or appointment or election by districts or otherwise, but Congress determines the time of appointment and the place of meeting. 146 U. S. 1. In all States the electors are now chosen by ballot at the regular election every four years.

No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The law fixes the succession in case of disability of both President and Vice-President in the following order: Secretary of State, Secretary of Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of may ability, preserve, protect and defend the Constitution of the United States."

SEC. 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

The appointing power of the President is enormous, but he has been relieved somewhat by the civil service law which provides for filling most of the subordinate positions through competitive examination.

Treaties made under the authority of the Constitution control inconsistent provisions of State Constitutions and Legislatures. 100 U. S. 483.

SEC. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Messages to Congress have been written documents read to the two houses for more than one hundred years. President Washington read his messages in person. President Wilson has adopted that plan also for important messages.

SEC. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Impeachment consists in the preferring of charges by the House of Representatives. The trial is had by the Senate. See sections 2 and 3 of Article I.

ARTICLE III.

SECTION 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

The inferior courts consist of the district court, the circuit court of appeals, court of claims and special courts such as the court of patent appeals, etc.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of

the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general

laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

This provision applies only when questions arise in courts which bring such acts, records or proceedings in issue. 194 U. S. 48.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

The privileges and immunities of citizens of the United States are such as arise out of the nature and essential character of the federal government. 16 Wall. (U. S.) 36.

But this does not guarantee the rights in a State which a person may have in another State. See 153 U. S. 684.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

For the discussion of the right to take and govern foreign territory, see Dorr v. U. S. 195 U. S. 138, (one of the so-called Insular cases) and cases cited.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall

protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

What constitutes a republican form of government? See 7 Wall. (U. S.) 700.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

The constitution has been amended seventeen times from 1789 to 1913.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Treaties made under authority of the Constitution control conflicting provisions of State Constitutions and laws. 100 U. S. 483.

ARTICLE VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

ARTICLES IN AMENDMENT OF THE CONSTITUTION

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The first ten amendments were adopted in 1790 in fulfillment of a demand for a bill of rights. They apply to the national government and limit its powers but do not restrict the power of the States with respect to its people. 194 U. S. 445 and cases cited.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The provision of the Indiana Constitution is an exact copy of this article.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

When the laws operate on all alike and do not subject an individual to an arbitrary exercise of the powers of government, due process of law and the equal protection of the laws are secured. 194 U. S. 618. When the federal government appropriates property there is an implied contract that it will pay the value thereof. 188 U. S. 445.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Congress cannot deprive persons in territories of the right to trial by jury of twelve persons. 197 U. S. 516.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The infliction of different penalties on persons jointly charged with a crime does not make the greater punishment cruel and unusual. 191 U. S. 126.

ARTICLE IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

This amendment was adopted in 1792 to prevent citizens of one State from suing another sovereign State. 2 Wall. (U. S.) 419.

ARTICLE XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of

whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of

President shall be eligible to that of Vice-President of the United States.

This amendment was adopted in 1803 to correct the defects found to exist in the original provision for the election of President and Vice-President

The electors meet on the second Monday in January after their election.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. *Power to enforce prohibition.* Congress shall have power to enforce this article by appropriate legislation.

The thirteenth, fourteenth and fifteenth amendments were the result of the Civil War. They were intended to free and protect the slaves.

ARTICLE XIV.

SECTION 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The fifth amendment of similar import restricts the powers of the federal government. The fourteenth restricts the powers of the States. The fourteenth amendment operates solely on States and not on individuals. 203 U. S. 1.

The fourteenth amendment has come to be the most important restriction in the Constitution. Some of the more important cases are 169 U. S. 366; 198 U. S. 45; 194 U. S. 445; 203 U. S. 151; 208 U. S. 412. The latter is the famous Oregon case in which the court upheld the right of the State to limit the hours of labor of women. The word "person" in this section has come to be held to include corporations.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office. civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The fifteenth amendment does not grant the right of suffrage but prevents the States from discriminating on account of race, color, or previous condition of servitude. 110 U. S. 651. See also, 203 U. S. 1.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

This amendment was ratified in 1913.

ARTICLE XVII.

See section 3 of Art. I.

INDIANA'S CENTURY OLD CONSTITUTION 1951

INDIANA'S CENTURY OLD CONSTITUTION

By JOHN D. BARNHART and DONALD F. CARMONY
of Indiana University

Including the
STATE CONSTITUTION
Prepared by the Legislative Bureau

STATE CONSTITUTION CENTENNIAL COMMISSION
INDIANAPOLIS, 1951

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CONSTITUTION

of the

STATE OF INDIANA

and of the

UNITED STATES

Issued by the
Legislative Bureau
State House
Indianapolis, Indiana

July, 1941

16
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PENDING AMENDMENTS

The following proposed amendments to the Constitution of the State of Indiana, having been agreed to by the Eighty-second General Assembly, will be submitted to the Eighty-third General Assembly for reconsideration:

1. That the Constitution of the State of Indiana be amended by creating and adding a new article to be Article 17 providing for city and town charters.

2. That section 2 of Article 6 of the Constitution of the State of Indiana be amended to read as follows: Sec. 2. There shall be elected, in each county, by the voters thereof, at the time of holding the general election of 1946, and every four years thereafter, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for four years, and whose term of office shall begin on the first day of January next succeeding their election; and no person shall be eligible to either of such offices for more than eight years in any period of twelve years. The term of office of any such officer who is serving at the time of the general election of 1946 shall terminate on the first day of January next succeeding such election, but any such officer whose term is abridged by virtue of this section shall be eligible to any of such offices as he would have been if he had not previously served in such office.

3. That section 11 of Article 7 of the Constitution of the State of Indiana be amended to read as follows: Sec. 11. There shall be elected, in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years.

INDIANA'S CENTURY OLD CONSTITUTION

Indiana's constitution, now one hundred years of age, is one of the older state constitutions. It was written before the Civil War when most of the states of the Union were readjusting their fundamental law to conform to changes in economic and political conditions. It has served the people through prosperity and depression, through war and peace. Since its adoption in 1851, Indiana has grown from a frontier agricultural state to a modern industrial commonwealth.

What It Provides: A Brief Summary

It has provided the people with a satisfactory frame of government, perhaps in general neither better nor worse than other states possess. Its bill of rights protects and guarantees those priceless civil liberties which so many citizens assume rather than appreciate. It furnishes a government divided into three separate and limited departments: executive, legislative, and judicial. The officials of these three branches are chosen in free elections by the men and women of the state. The legislature, which exercises restricted powers, is composed of a house of representatives and a senate. The governor, the lieutenant-governor, and other executive officials are also clothed with limited authority. The state Supreme Court and the other state courts form the judicial branch, the judges of which are popularly elected. The process of amendment as interpreted by the supreme court before 1935 did not work satisfactorily and tended to discourage change.

Reasons for a New Constitution
The Spirit of the Time

The formation of a new basic charter for Indiana was not an isolated incident but was in part the commonwealth's reaction to the spirit of the time. Everywhere reforms had been advocated and in some places adopted. European coun-

tries had experienced two waves of revolution and had made some progress towards democracy. In the United States the rise of the common man had been expressed in the formation of systems of tax-supported schools, the beginning of the labor movement, the rise of a woman's rights crusade, a demand for prison reform, widespread interest in the emancipation of the slaves, and many other suggested changes. That the conservative Whigs in Indiana feared the calling of a convention might usher in radical changes is not surprising.

The majority of the states undertook the formation of new constitutions between the election of Andrew Jackson to the Presidency in 1828 and the beginning of the Civil War. Some of the states passed through the process a second time. During the twenty years following the panic of 1837, twenty-two new charters were written, and many more were adopted in the Mississippi Valley than in the rest of the nation. Indiana did not hasten to join the movement, but when Wisconsin and Illinois in 1848 and Kentucky and Michigan in 1850 revised or adopted new systems of government, Indiana and Ohio also decided upon revision. The Hoosier state already had a democratic constitution and this may have been responsible for her leisurely pace in securing a new one.

With the settlement of the interior of the country new problems had arisen which called for the readjustment of the states' political machinery. Among these were the rise of the corporation, the development of banking, and the use of the states' financial resources in the building of internal improvements, roads, canals, and even railroads, in order to stimulate greater economic progress. In some of the states, corporations had been granted unwise privileges in special charters and had escaped from the power of legislative control and taxation. The principles of sound banking had not been generally understood throughout the country, and the people had suffered financial loss from insolvent banks and unsound paper money. President Jackson had waged war on the powerful Bank of the United States and had popularized the dangers of granting too much power to a single institution. During his administration several state legislatures had endeavored to hasten the economic development of their

states by undertaking to finance canals between navigable bodies of water and roads and railroads where canals were clearly impossible. They desired to bring some type of transportation to every part of the state in order that the people could send surplus crops to Eastern and European markets in exchange for manufactured goods and thus escape from the frontier self-sufficiency which had limited them to the goods they could make or raise. But in the pursuit of this laudable goal the states undertook too many expensive projects at one time, adopted many doubtful plans that experience soon proved to be impossible, and finally brought heavy indebtedness and near-bankruptcy on some states and helped to produce a serious national depression.

The state legislatures seemed to the voters to be particularly responsible for this wave of spending the people's money, for they had adopted the unsound projects, appropriated the money, and authorized the bond issues. This unwise use of legislative power served to call attention to the early constitutions which had given greater authority to the legislative branch of the government in contrast to the executive and judicial branches. President Jackson had also popularized the idea that the chief executive could be as representative of the people as the legislature. A general sentiment developed in favor of the restoration of a greater balance to the various branches of government and of limitations on the authority of the legislature to involve the states in excessive indebtedness.

Other political ideals which the people wished to include in their constitutions were more frequent elections in order to keep their officers subject to their wishes, the popular choice of a greater number of public officials, and the broadening of the franchise to give all adult white male inhabitants the right to vote for the officers who passed the laws, authorized the taxes, and administered the government. There was a general opinion that the common man should be given equal representation and participation in his government, that he should have opportunity to vote for or run for elective offices and to be appointed to such positions as remained appointive, that the government should express his ideas, protect his

interests, and that the colonial idea of government by the wellborn was no longer acceptable to the American people.

Dissatisfaction with Indiana's First Constitution

For a number of years after 1816 the people of Indiana appeared to be satisfied with their original organic law but in time the desire for a new constitution grew. The framers of the original document provided only one method of amendment, the calling of a convention. Every twelfth year the voters were to cast a ballot in favor of or in opposition to a convention. A referendum was held in 1823 before the first twelve years had elapsed and a large majority opposed a convention partly because they feared the proponents planned to change the provision which prohibited slavery. The first and second twelve-year referendums indicated very little demand for change. In 1846 another poll was taken and, for the first time, a majority of those who participated voted favorably. There were 32,468 votes for and 27,123 against a convention at an election in which 126,244 persons voted for governor.[1] After much discussion the legislature decided not to call a convention.

In the late forties the movement for a new constitution gained momentum. The Democrats came into power in 1843 and, as heirs of Jackson, became willing to incorporate tenets of Jacksonian Democracy into the state's basic charter. There were several demands which were fairly common among the advocates of constitutional change. The legislature was the principal single target of criticism. There were complaints against the frequency and length of sessions, the mounting volume of local and special legislation, the granting of legislative divorces, the use of plural rather than single electoral districts in electing members of the Assembly, the participation of the legislature in the election of certan state officials, the failure to require that each bill embrace but one subject and that it be clearly stated in its title. Popular belief blamed the Assembly for the corruption, inefficiency, and debt which had accrued from the unsuccessful internal improvements

[1] *Indiana Documentary Journal*, 1846-1847, part 2, pp. 79-82.

scheme of 1836. Many citizens also thought that biennial sessions of limited duration for the General Assembly would lead to greater economy.

The practice of local and special legislation was referred to as the weakest point in the first constitution. Governor James Whitcomb told the Assembly that "If calling a Convention to amend the Constitution were productive of no other result, than furnishing an effectual remedy for this growing evil, it would be abundantly justified."[2] Under the old constitution the Assembly changed the names of individuals, granted divorces, vacated alleys, incorporated local organizations, approved separate charters for railroads and manufacturing companies, enacted special laws for the government of towns and counties, and regularly made special or local exceptions to the revenue and other laws. The result was constant "logrolling" with many undesirable concessions to local or special interests.

If the legislature was the principal object of criticism there were many other suggested changes each of which contributed its part to the mounting demand for a new constitution. Popular election of as many officials as possible was a cardinal tenet of Jacksonianism, but in Indiana the secretary, auditor, treasurer, and the president judges of the circuit courts were chosen by the legislature, and the judges of the supreme court were appointed by the governor, with the advice and consent of the Senate. There had been criticism of some of the appointments. The coming of Europeans, especially Germans and Irish, and the desire of the politicians to secure their votes resulted in a demand that the franchise be liberalized to permit them to vote before they became citizens. The continued arrival of free Negroes in the state produced a peremptory call for exclusion on the grounds that separation of the races would be good for both. The failure of the legislature to create a public school system was an item of disappointment to many. The development of free banking in other states seemed to require a reconsideration of the prohibition of banking, except a state bank, by the Constitution of 1816. Many favored simplifying the laws and procedure of the

[2] *Indiana House Journal*, 1848-1849, 24.

courts. Many other proposed changes involved property rights for women, more autonomy for local government, homestead exemption, a later and more convenient date for holding general elections, abolition of the grand jury system, increased governmental economy, more adequate support for the recently established benevolent institutions, a decrease in the appointive and pardoning power of the governor, and additional encouragement to agriculture, mining, and manufacturing. Many of the proposals could have been provided by legislation, but the accomplishment of reform became connected in the minds of the people with the calling of a constitutional convention.

Calling the Convention

Late in 1848 Governor Whitcomb enumerated various constitutional reforms which were needed and recommended the calling of a convention to revise or amend the constitution. He suggested that the people be consulted by means of a referendum and if the vote was favorable that the legislature should carry out the mandate. Early the next year the Assembly provided for the referendum. The Democratic members with one exception favored consulting the voters on the question, but the Whigs were less enthusiastic. The law provided that the poll be taken on August 6, 1849, in which every qualified voter was eligible to participate. When the votes were counted, 81,500 were in favor of a convention and 57,418 were opposed.[3] The voters in approximately four-fifths of the counties supported the convention and these counties were scattered throughout the state. Most of the counties in which the voters were unfavorable lay in the central and southern parts of Indiana.

Governor Paris C. Dunning, who succeeded to the governorship when Whitcomb was elected United States Senator, recommended that the legislature issue a call for the election of delegates to a convention. The Assembly accepted this suggestion and provided that delegates were to be chosen at the annual election in August 1850, that all eligible to vote for members of the General Assembly should be qualified

[3] *Ibid.*, 1849-1850, 81-82.

to vote for or serve as delegates, that the convention should convene in Indianapolis on October 7, 1850, and that its work should be submitted for ratification or rejection to the voters of the state.

An effort was made to secure a bi-partisan election of delegates, which was supported particularly by the Whigs, but the Democrats were confident of their numerical superiority and rejected the proposal. The election resulted in the choice of 150 delegates, two-thirds of whom were Democrats and one-third were Whigs.

The Convention

The convention was not unusual in the ability and experience of its members but was "a representative body of citizens. The best known men of the State at the time, however, were not present. From our distance, one would say that Robert Dale Owen, Alvin P. Hovey, Thomas A. Hendricks, W. S. Holman, Schuyler Colfax and Horace P. Biddle were among its most distinguished members, but they were young and mostly without wide reputation at the time. The really noted men of the convention as they gathered together for the first time were Thomas D. Walpole, Abel Pepper, Daniel Kelso, James G. Read, David Kilgore, Ross Smiley, Michael G. Bright, William M. Dunn, George W. Carr, David Wallace, Jacob Page Chapman, James Rariden and John I. Morrison. Seventy-five of the members had served in the General Assembly, thirteen of whom had sat in the last session. Twenty-five more made this the stepping stone to later legislative service. Fourteen saw service in the United States Congress; two later became governors [Hendricks and Hovey], while one was an ex-governor [Wallace]. There were seven well-known editors, three of whom came from Indianapolis. The great Whig lawyers of the State were noticeably absent. A widespread prejudice against educated men existed at the time. There were three graduates of the State University and perhaps as many more were graduates of other colleges."[4] Colfax and Hendricks also became vice-presidents of the United States.

[4] Logan Esarey, *A History of Indiana . . .* (2 vols., Fort Wayne, Indiana, 1924), I, 515-516.

Although the convention delegates included a banker, a university professor, several skilled craftsmen, 42% were farmers, 25% lawyers and 12% physicians. The youthfulness of the state was indicated by the few who were native-born Hoosiers, only 13 out of 150. Natives of Kentucky were more numerous, 22, than those of any other state. Virginia and Pennsylvania were each the birthplace of 19 delegates, while 17 were natives of Ohio, 16 of New York, 10 of North Carolina, 7 each of Maryland and Tennessee, 4 each of South Carolina and Massachusetts, 2 of Connecticut and 1 each of Delaware, Vermont, New Jersey, and New Hampshire. Only 6 were born abroad and these were divided equally between Scotland and Ireland. The Southern origin of much of Indiana's population is indicated by the distribution of the birthplaces of the delegates: 70 in the South, 36 in the Middle Atlantic States, 30 in the North Central States, 8 in New England, and 6 in Europe.[5]

The delegates assembled on October 7, and organized the convention by selecting Democratic officers. George W. Carr, who had been speaker of the Indiana House of Representatives during the two preceding sessions, was chosen president by an almost unanimous vote, and William H. English, politician and historian, was elected principal secretary. "For the purpose of considering, drafting and submitting sections to be incorporated in the new constitution, the convention was divided into 22 standing committees. The material out of which the new constitution was constructed consisted of the corresponding sections of the constitution of 1816; the provisions of the existing constitutions of the other states, especially Illinois and Wisconsin; resolutions submitted by delegates either on their own initiative or on request of their constituents; and recommendations and suggestions of the members of the several committees and other delegates on the floor of the Convention. . . . After a committee had had time to deliberate, a draft of a section or series of sections was

[5] *Members of the Convention to Amend the Constitution of the State of Indiana, Assembled at Indianapolis,* October, 1850. . . . By Baker & McFarland. Indiana State Sentinel, a broadside. This table of delegates indicates the nativity, occupation, politics, age, etc., for each member of the convention.

reported to the Convention for consideration. In maturing a section of the Constitution, the procedure followed was substantially identical with that followed in the General Assembly in maturing bills, except that when a section was finally adopted it was referred to a Committee on Revision and Phraseology to be put in final form. Sections which were revised by this committee were usually reported back to the Convention in groups and formally approved."[6]

There were certain reforms that were generally demanded throughout the state and that were inserted in the new constitution with little debate or delay. But other proposed changes were the subject of much debate and parliamentary maneuvering. A compromise was adopted which authorized the assembly to provide either a state bank with branches or establish a system of free banking, and which also prohibited the state from again subscribing to the stock of a bank. An unsuccessful effort was made to insert in the new constitutional law a provision exempting homesteads from attachment or sale for debt. The question of Negro exclusion occasioned much discussion. A proposal was introduced to prohibit Negroes from coming to or settling in the state and from employment or the ownership of property. Fines collected for the violation of these provisions were to be supplemented by an appropriation and used to colonize the Negroes already in the state by sending them to Liberia. When finally adopted the measure was reduced to prohibition of entrance, settlement, and employment, and the use of the fines for colonization. A significant effort was made to free married women from the shackles of the English Common Law. Indiana in 1847 had granted to married women the right to control or dispose of such real estate as they might own. Robert Dale Owen and James E. Blythe struggled valiantly in the convention to add a provision to the constitution to extend this right to personal property. The subject was before the convention four different times and three times a provision was adopted and then eliminated. Although defeated

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[6] Charles Kettleborough, ed., *Constitution Making in Indiana . . .* (3 vols., *Indiana Historical Collections*, Indianapolis, 1916-1930), I, 221.

Owen laid the foundation for the accomplishment of this reform in the 1853 session of the General Assembly.

Owen was one of the most diligent, prominent, and influential delegates in the convention. He was the chairman of two important committees on Rights and Privileges, and on Revision, Arrangement, and Phraseology. "To this second body, or rather to Owen and two others acting as a subcommittee, fell the task of placing the various sections of the new constitution in logical sequence and imbuing them with unity of style and expression. Thanks to Owen's command of English, the finished document stands high in readability."[7]

The Constitution

In the new constitution, as in the old, the bill of rights was placed first, perhaps as a recognition of the significance of its provisions. The sections which define and protect the fundamental liberties and rights of the citizens were rearranged and restated in the new document, but there was little that was significantly different.

The importance of free elections and white manhood suffrage was recognized by placing the sections which guaranteed them in the second Article. Suffrage was extended to citizens of other countries resident in Indiana provided they declared under oath their intention to become citizens of the United States, but Negroes and mulattoes were excluded.

The legislature, as provided in Article Four, was to consist of a senate and a house of representatives. The senators, after the first election, were to be elected for terms of four years, but one-half of their number were to be chosen every two years. The representatives were to be elected for two-year terms. The legislature was limited to biennial and special sessions, its authority to borrow money was stringently curtailed, its legislative power considerably restricted to general laws in place of special laws, and its right to choose some of the lesser state officials was transferred to the people.

The executive branch of the government included the governor and the lieutenant-governor, as provided in Article

[7] Richard W. Leopold, *Robert Dale Owen, A Biography* (Cambridge, Massachusetts, 1940), 269-70.

Five, who were to be popularly elected for a term of four years, and who could not be re-elected until another person had served in their place for one term. Oddly enough the governor's veto was not strengthened but restated almost as in the first Indiana constitution. A simple majority of all the members of each house can pass a measure over the veto, and this is the number required to pass it originally.

Article Six required that the other administrative state officers should be elected for two years, be eligible for re-election, but ineligible to serve more than four years in any six. These differences in the terms of the major and minor state officers and of the members of the legislature have sometimes produced a situation in which the governor and lieutenant-governor belonged to one party, and the other administrative officers and a majority of the Assembly belonged to another party, and in which the two groups have at times failed to co-operate effectually.

Judges, even of the Supreme Court, were made elective, and the circuit court system revised by substituting one judge for each district in place of the three judges under the previous constitution. Commissions were to be appointed by the legislature to simplify court procedure and to codify the statute law. A section as troublesome as any was the one which granted to every voter of good moral character the right to practice law.

The constitutional provisions in regard to education were incorporated in Article Eight. The subject was treated in a very different spirit from that which had characterized the work of the first convention. The delegates confined themselves largely to creating a common-school fund and to requiring the legislature to provide for a system of common schools and the election of a state superintendent of public instruction. The county seminaries, which were the secondary schools of their day, were to be sold and their money and property placed in the common-school fund. Nothing was included about "a general system of education, ascending in a regular gradation, from township schools to a state university," a provision of the first constitution which had cast such distinction on the frontier state. The later document, however, required the assembly "to provide, by law, for a

general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all," where the earlier constitution had merely stated that it shall be the duty of the assembly to act "as soon as circumstances will permit." This was a change of first-rate importance and, although some time was to pass before a system of common schools was firmly established, this requirement was the foundation upon which it was built.

Article Nine required the legislature to provide for the support of institutions for the education of the deaf and dumb and the blind, for the treatment of the insane, and for the correction and reformation of juvenile offenders. Counties were authorized to provide for the aged, infirm, and unfortunate.

The legislature was prohibited in Article Ten from contracting any debt except to meet casual deficits in the revenue, to pay interest on the state debt, and to repel invasion, suppress insurrection, or provide for the public defense. Counties as well as the state were denied the right to become stockholders of any corporation. Banking was subjected to many regulations in the eleventh Article and general laws were required for the chartering of banks or other corporations. Indiana did not follow several other states in providing that laws conferring corporate powers should be subject to revision.

Article Twelve dealt with the Militia and Article Thirteen gave the provisions, already described, which concerned Negroes and mulattoes. The boundaries of the commonwealth were stated in Article Fourteen in the same words used in the Constitution of 1816. Miscellaneous items were gathered into the next article.

The method of amending the constitution was described in Article Sixteen. Unfortunately Indiana has not had in either constitution a satisfactory method of revising her constitutional law. Article Eight of the 1816 document provided only for the calling of a convention while the present document made no provision for a convention but only an awkward method of adopting individual changes. Amendments must be approved by two separate sessions of the General Assembly and then submitted to a referendum of the voters. The

Supreme Court has not always held to the same definition in deciding whether a majority of the electors have approved an amendment or not.

Finally the schedule at the end of the document made full provision for the transition from the old to the new scheme of government.

The Constitution Before the People

The work of the convention was completed on February 10, 1851, and the original handwritten copy of the new constitution was deposited in the office of the secretary of state. The General Assembly, which was then in session, passed an act submitting the constitution to a referendum vote. The governor on February 25 issued his proclamation notifying the electors that a poll would be taken on August 4. Article Thirteen, which dealt with Negroes and mulattoes, was submitted separately for approval or disapproval. The constitution and an address "To the people of Indiana," which a committee of the convention issued but which Owen probably prepared, were printed in the newspapers of the state. The Democratic press generally favored its adoption and were joined by a number of the Whig papers. The Negroes of the state were disappointed in their treatment by the convention. There was little expectation that the constitution would be defeated.

The vote was almost five to one for ratification. There were 113,230 in favor and 27,638 opposed. Only one county, Ohio, polled a majority against adoption, but in two other southern counties the supporters were only slightly more numerous than the opponents. On the other hand, Starke County in the northern part of the state cast a unanimous vote for ratification. Approval of Negro exclusion was even more decisive, for 113,828 voted favorably and 21,873 were opposed.[8]

Governor Joseph A. Wright on September 3, 1851, proclaimed that the constitution and the thirteenth Article had been adopted by the people of the state and that it would become the Constitution of Indiana on November 1.

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[8] *Indiana State Journal*, Sept. 20, 1851.

"Taken as a whole, it is not a great constitution," wrote Professor Logan Esarey. "It suffers in comparison with the one it displaced. Its departures from that instrument in most cases are of very doubtful value. Its justification rests on the substitution of biennial for annual assemblies and abolishment of private and local legislation."[9]

In making this observation Professor Esarey overlooked the provisions in the 1851 Constitution that required the legislature to establish immediately a system of common schools and that permitted amendment of the charter. If his judgment is a fair appraisal, it is not surprising that the document should have been amended. Had the amending process been less difficult changes would probably have come earlier and in greater number. Out of the 453 amendments that have been proposed, only twelve have been adopted. Probably most of the proposals would have been rejected for lack of support, but some no doubt were defeated by the process and others were delayed. The so-called Lawyers' Amendment in its original form was submitted three times and each time received more favorable votes than unfavorable, but under earlier rulings of the Supreme Court was held to have not been ratified. Finally in 1935 the Court held that it had been adopted after it was submitted to the voters for the fourth time.

Amendments

The first amendment, which forbade the Assembly to assume any further liability connected with the debt settlement resulting from the internal improvements program of 1836, was adopted in 1873. Its constitutionality has not been questioned before the courts.

Seven amendments were adopted in 1881. They (1) omitted the word "white" from the suffrage requirements and added further residence requirements; (2) eliminated the section which denied suffrage to the Negro; (3) changed the date of general elections from October to November; (4) provided that Negroes should be counted in the state enumerations and in the apportionment of representation; (5) authorized

[9] Esarey, *op. cit.*, I, 519.

the grading of local offices in order to legalize differences in salary; (6) changed the wording of the section which described the judicial system and thus made possible the formation of appellate and superior courts; and (7) eliminated Article Thirteen which had excluded Negroes from entering the state and substituted a new article which limited the debts of municipal corporations. In general they brought the state in line with the results of the Civil War and the Federal Constitutional Amendments numbered XIII, XIV, and XV. They were approved by the legislatures of 1877 and 1879, and submitted to the voters at the general election in the spring of 1880. They were approved by a majority of the voters who voted on the amendments but not by a majority of all the voters in the general election. The Supreme Court in *State* v. *Swift* (69 Indiana 505) held that they were not adopted. The critical question was the determination of the number of electors of the state. The court decided that the number actually voting at the election at which the amendment was submitted constituted a satisfactory basis. It suggested that the amendments had not been rejected and therefore might be resubmitted. This was done at a special election on March 14, 1881, at which the voters ratified them. Since there was nothing else before the voters, the number voting on the amendments became the number of electors, and a majority of those voting on the amendments was therefore sufficient for ratification.

Two amendments were approved by the legislatures of 1897 and 1899 and submitted to the voters at the general election in the fall of 1900. One provided for a larger number of Supreme Court judges and the other authorized the General Assembly to prescribe the qualifications necessary for the practice of law. Both received a majority of votes cast on the amendments but not a majority of all votes cast at the general election.

The latter, known as the Lawyers' Amendment, was brought before the Supreme Court, *In re Denny* (156 Indiana 104), and was declared to have been rejected, because it was not approved by a majority of the voters who cast ballots in the general election. The reasoning applied to both amendments. The Lawyers' Amendment was resubmitted to the voters in

1906 and 1910 with the same result and the Supreme Court reiterated its position, *In re Boswell* (179 Indiana 292).

Governor Thomas Marshall became convinced that the constitution could not be amended and urged the legislature to frame a new constitution and submit it to the voters. When the Assembly carried out his suggestion, the court held in *Ellingham* v. *Dye* (178 Indiana 336) that the legislature had exceeded its authority in drawing up a constitution and that the prescribed constitutional procedure had not been followed if the proposed constitution were considered to be a series of amendments.

These developments occurred in 1911 and 1912 when Progressivism was becoming popular in the Middle West and the reformation of Indiana's constitution seemed very important to many Hoosiers. The Assembly in 1913 adopted twenty-two amendments, named after Senator Evan B. Stotsenburg, which embodied the main provisions of the Marshall constitution. The Assembly also submitted to the voters the question of calling a constitutional convention. The voters rejected the latter proposal in November, 1914, and the Assembly of 1915 rejected the Stotsenburg amendments.

Two years later, at the suggestion of the governor, the Assembly enacted a measure which provided for the convening of a constitutional convention, but before the election was held the Supreme Court declared the act unconstitutional because the question had not previously been submitted to the people.

The next Assembly proposed sixteen amendments, thirteen of which were readopted by the legislature in 1921. They were submitted to the voters at a special election in 1921, but only one was ratified. This one extended the franchise to women but restricted it to citizens of the United States.

Four new amendments were approved by the Assemblies of 1923 and 1925, but were not ratified by the voters according to the prevailing interpretation of the constitution. The Assemblies of 1927 and 1929 approved amendments permitting an income tax and repealing the section that prevented establishment of further qualifications for the practice of law. These were submitted to the voters at the general election of 1932 with the usual result. A majority of the votes on the amend-

ments were favorable but they were not a majority of the votes cast in the general election. The Lawyers' Amendment was taken before the Supreme Court, *In re Todd* (208 Indiana 168), and the Court reversed its previous rulings and held that a majority of the electors who voted on the amendment was sufficient and that the amendment had been constitutionally ratified.

The decision created almost as many problems as it solved. If the reasoning were applied to the previous efforts to amend the constitution, several of them which were held to have failed of ratification would now be a part of the constitution. From 1935 to 1948 there was no authoritative ruling and it was impossible to know what amendments were incorporated in the constitution except by bringing cases before the Court. In the latter year in *Oscar Swank et al.* v. *Robert H. Tyndall et al.* (78 N. E. 2 S., 535), the Court ruled that the decision *In re Todd* applied only to the amendments voted upon in 1932 and those submitted after that date. This decision made the constitution definite once more. Actually it also amounted to an amendment which made the process of amending the constitution much easier.

Meanwhile in 1936 Article Twelve, Section One, was changed to admit Negroes to the Militia and in 1940 three additional amendments were ratified. One repealed the double liability of stockholders of banks, another repealed the twenty-year limit on bank charters, and the third transferred liability for obligations of corporations from the corporators to the stockholders. Finally the term for which sheriffs are elected was increased to four years in 1948.

While all these details illustrate the difficulties occasioned by unwise sections of a constitution, they also reveal a larger pattern. Indiana has not seen fit to call a convention and to engage in a general revision of her fundamental charter, but at intervals has made rather significant changes in it. In 1881 changes were made in conformity with the experience of the state and nation in the Civil War and the postwar reconstruction. These amendments removed from the constitution most of the evidence of racial intoleration and of the unfortunate original Article Thirteen. This was not entirely completed until 1936 when Negroes were admitted to

the Militia. The Progressive Era of American history saw much thinking about old and new problems and a revisal of many ideas. In Indiana this resulted in the adoption of woman suffrage, the income tax, and the Lawyers' Amendment. Finally the last great depression was probably influential in obtaining the amendments of 1940. Consequently, there has been in the course of the century a considerable revision of Indiana's Constitution—a revision which is in part responsible for the people's attachment to the century-old charter and for its continued usefulness to the state.

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Bibliographical Note

Brief general discussions of the background, framing and content of the Constitution of 1851 are to be found in Logan Esarey, *A History of Indiana . . .* (Fort Wayne, Indiana, 1924), I, 509-521, and Charles Roll, *Indiana . . .* (Chicago and New York, 1931), II, 116-125. These histories are available in many public and school libraries in the state.

The original constitution and many related documents are reproduced in Charles Kettleborough, comp., *Constitution Making in Indiana . . .* (3 vols., *Indiana Historical Collections,* I, II, XVII, Indianapolis, 1916, 1930). The record of the day by day proceedings of the convention is contained in *Journal of the Convention of the People of the State of Indiana, to Amend the Constitution, Assembled at Indianapolis, October, 1850* (Indianapolis, 1851). Any who wish to make a thorough study of the discussions within the convention will find it indispensable to refer to the *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana, 1850* (2 vols., Indianapolis, 1850). These volumes of source materials are also available in some of the public and school libraries of the state as well as at the Indiana State Library, Indianapolis.

The contemporary newspapers generally recorded much about the calling of the convention, its work and the popular approval of the new organic law. Space prohibits any attempt to list available files but the *Indiana State Sentinel,* the *Indiana State Journal,* and the *Indiana Statesman,* all published at Indianapolis, are among the most useful. The *St. Joseph Valley Register,* of South Bend, is perhaps the most useful of the newspapers not published at Indianapolis; Colfax was a delegate and also editor of the *Register.* Any files covering the period from August 1849 through August 1851 would be of possible value.

For anyone interested in revision the following pamphlet will be stimulating and useful: Louis E. Lambert and E. B. McPheron, *Modernizing Indiana's Constitution* (Bureau of Government Research, Dept. of Government, Indiana University). It was originally published in *The Indiana Law Journal,* XXVI (No. 2, Winter 1951).

CONSTITUTION OF THE STATE OF INDIANA

1851*

PREAMBLE

To the end, that justice be established, public order maintained, and liberty perpetuated: We, the People of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

ARTICLE 1.

BILL OF RIGHTS

SECTION 1. We declare, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that all power is inherent in the People; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the People have, at all times, an indefeasible right to alter and reform their government.

SEC. 2. All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SEC. 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

SEC. 5. No religious test shall be required, as a qualification for any office of trust or profit.

SEC. 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

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* The Constitution of Indiana was drafted by a convention which assembled at Indianapolis on October 7, 1850, and adjourned on February 10, 1851. The electors were afforded the opportunity of voting on the ratification or rejection of the Constitution as a whole and on Article 13 relative to Negroes and Mulattoes. At the election held on August 4, 1851, the Constitution as a whole was ratified by a vote of 113,230 to 27,638, and Article 13 was ratified by a vote of 113,828 to 21,873. The Constitution became effective November 1, 1851.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

SEC. 8. The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.

SEC. 9. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

SEC. 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

SEC. 12. All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily without delay.

SEC. 13. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witness face to face, and to have compulsory process for obtaining witnesses in his favor.

SEC. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

SEC. 15. No person arrested or confined in jail, shall be treated with unnecessary rigor.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.[1]

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

SEC. 20. In all civil cases, the right of trial by jury shall remain inviolate.

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1. The punishment of death is not in conflict with this section. Driskill v. State, 7 Ind. 338; Rice v. State, 7 Ind. 332. The indeterminate sentence law is valid and is an attempt to carry out the mandate of this section. Miller v. State, 149 Ind. 607.

SEC. 21. No man's particular services shall be demanded, without just compensation. No man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.[2]

SEC. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.[3]

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.[4]

SEC. 26. The operation of the laws shall never be suspended, except by the authority of the General Assembly.

SEC. 27. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion; and then, only if the public safety demand it.

SEC. 28. Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

SEC. 30. No conviction shall work corruption of blood, or forfeiture of estate.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

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2. If a debtor practices fraud to avoid payment of a debt, he may be imprisoned. Baker v. State, 109 Ind. 47. A judgment against a husband for failure to support his wife is not a debt within the meaning of this section. Perry v. Pernet, 165 Ind. 67.

3. An *ex post facto* law is one which makes an act unlawful which was lawful when committed, or which adds to the punishment for an act, or which increases the malignity of the crime, or renders a conviction easier. Strong v. State, 1 Blkf. 193; Dinckerlocker v. Marsh, 75 Ind. 548; Davis v. State, 152 Ind. 34. The phrase *ex post facto* relates to criminal laws only. Andrews v. Russell, 7 Blkf. 474; Pittsburgh Ry. Co. v. Lightheiser, 168 Ind. 438.

4. Laws cannot be made to take effect upon a submission to a vote of the people. Maize v. State, 4 Ind. 342. But laws may be enacted which provide for the petition or vote by a certain number before the benefit of the law can be invoked. Thompson v. Peru, 29 Ind. 305; Lafayette R. R. Co. v. Geiger, 34 Ind. 185; Groesch v. State, 42 Ind. 547. Laws may be passed conferring on state boards the authority to issue rules which have the force of law. Isenhour v. State, 157 Ind. 517.

SEC. 32. The people shall have a right to bear arms, for the defense of themselves and the State.[5]

SEC. 33. The military shall be kept in strict subordination to the civil power.

SEC. 34. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

SEC. 36. Emigration from the State shall not be prohibited.

SEC. 37. There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the State.[6]

ARTICLE 2.

SUFFRAGE AND ELECTION

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.[7]

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5. Laws prohibiting the carrying of concealed weapons do not violate the provisions of this section giving the people the right to bear arms. McIntyre v. State, 170 Ind. 163.

6. For all practical purposes, this section is now obsolete.

7. This section has been amended twice. The first amendment was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast at the township election was 380,771; the total number of votes cast in favor of the amendment was 169,479, and the total number of votes cast against the amendment was 152,363. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held that the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election, and 123,736 votes were cast in favor of the amendment and 45,975 votes were cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force. The present amendment was proposed by the General Assembly of 1919, readopted by the General Assembly of 1921, and submitted to a vote of the people at a special election held on September 6, 1921. There were 218,696 votes cast at the election, and 130,242 votes were cast in favor of the amendment and 80,574 votes were cast against it. On September 13, 1921, Governor Warren T. McCray issued his proclamation declaring the amendment in force. As originally adopted, this section restricted the right of suffrage to white male citizens and prescribed a residence qualification of one year in the United

SEC. 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine, have the right to vote.

SEC. 4. No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States.

SEC. 5. [Stricken out by constitutional amendment of March 24, 1881.][8]

SEC. 6. Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward, to procure his election.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

SEC. 9. No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That offices in the militia to which there is attached

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States and six months in the state. The amendment of 1881 struck out the word "white" and thus conferred the right of suffrage on male negro citizens; and it also prescribed a residence qualification of 60 days in a township and 30 days in a ward or precinct, and it authorized the legislature to require voters to register. The amendment of 1921 conferred full suffrage on women, restricted the right to vote to native born or fully naturalized citizens, and eliminated the provision relative to the registration of voters.

The legislature has no authority to change the qualifications of voters as fixed by the Constitution. Morris v. Powell, 125 Ind. 281; State v. Shanks, 178 Ind. 330. A primary election is not an "election" as contemplated in this section of the Constitution and accordingly additional qualifications for voters may be prescribed. Kelso v. Cook, 184 Ind. 173.

8. As adopted in 1851, Sec. 5 provided that "No Negro or Mulatto shall have the right of suffrage." The amendment which struck this section out of the Constitution was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast at the township election was 380,771; the total number of votes cast in favor of the amendment was 177,542, and the total number of votes cast against the amendment was 139,002. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held that the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election, and 124,952 votes were cast in favor of the amendment and 42,896 votes cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force.

no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *And provided, also,* That counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.[9]

SEC. 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit, until he shall have accounted for, and paid over, according to law, all sums for which he may be liable.

SEC. 11. In all cases in which it is provided, that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

SEC. 12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.

SEC. 13. All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce.*[10]

SEC. 14. All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided,* That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.[11]

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9. The following offices have been held to be lucrative: County recorder, county commissioner, Dailey v. State, 8 Blkf. 329; township trustee, road supervisor, Creighton v. Piper, 14 Ind. 182; Bishop v. State, 149 Ind. 223; colonel of volunteers, reporter of Supreme Court, Kerr v. Jones, 19 Ind. 351; mayors of cities, Howard v. Shoemaker, 35 Ind. 111; school trustees and trustees of the state benevolent institutions, Chambers v. State, 127 Ind. 365.

10. This section, requiring that all elections shall be by ballot, does not prevent the use of voting machines. Spickerman v. Goddard, 182 Ind. 523.

11. As adopted in 1851, Sec. 14 provided that "All general elections shall be held on the second Tuesday in October." The present amendment was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast in favor of the amendment was 174,400, and the total number of votes cast against the amendment was 144,812. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election and 128,038 votes were cast in favor of the amendment and 40,163 votes were cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force.

The following amendment to this section was proposed by the General Assembly of 1923 and readopted by the General Assembly of 1925: "All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: Provided, That the General Assembly may provide by law for the election of all

ARTICLE 3.

DISTRIBUTION OF POWERS

SECTION 1. The powers of the Government are divided into three separate departments: The Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.[12]

ARTICLE 4.

LEGISLATIVE

SECTION 1. The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana"; and no law shall be enacted, except by bill.[13]

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judges of courts of general or appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and may also provide for the registration of persons entitled to vote. In providing for the registration of persons entitled to vote the General Assembly shall have power to classify the several counties, townships, cities, and towns of the state into classes, and to enact laws prescribing a uniform method of registration in any or all of such classes." This proposed amendment was submitted to the voters at the general election held on November 2, 1926. The total number of votes cast at the general election of 1926 was 1,052,994; the total number of votes cast in favor of the amendment was 198,579; and the total number of votes cast against the amendment was 184,684.

On April 7, 1948, the Supreme Court of Indiana, in the case Swank et al. v. Tyndall, et al., 226 Ind. 204, held that the law as stated in State v. Swift, (1880) 69 Ind. 505; In re Denny, (1901) 156 Ind. 104; and In Re Boswell, (1913) 179 Ind. 292 constituted the law with reference to the method of ascertaining the majority vote on proposed amendments to the Constitution up to the date of the 1932 general election, and that the decision of the court in the Todd case, 208 Ind. 168, became the law with respect to the vote required to adopt a constitutional amendment voted on at and after the 1932 general election. The court in said case, also held that the decision in the Todd case has no retrospective effect. Since the total vote for the proposed amendment was not a majority of all the votes cast at the 1926 general election, the amendment was not ratified and did not become a part of the Constitution.

12. This is the famous "separation of powers" section of the Constitution. The three departments of government are equal, coordinate and independent. Lafayette R. R. Co. v. Geiger, 34 Ind 185. One department of the government cannot inquire into the motives controlling another department. Wright v. Defrees, 8 Ind. 298; McCulloch v. State, 11 Ind. 424. The legislature alone has power to make, sanction, suspend or give effect to laws. Maize v. State, 4 Ind. 342. The construction of statutes is a judicial power and cannot be exercised by the legislature. Guckien v. Rothrock, 137 Ind. 355. The Governor cannot be compelled by mandate to perform an official duty. Hovey v. State, 127 Ind. 588.

13. The legislative authority of the General Assembly is supreme and sovereign, subject only to the restraints imposed thereon by the State and Federal Constitutions and laws and treaties passed and made in pursuance thereof. Lafayette

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts, into which the State may, from time to time, be divided.[14]

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election; *Provided, however,* that the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class, at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all male inhabitants over the age of twenty-one years.[15]

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the

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R. R. Co. v. Geiger, 34 Ind. 185; Hanly v. Sims, 175 Ind. 345; Carr v. State, 175 Ind. 241. Laws must be enacted by bill and the style must be: "Be it enacted by the General Assembly of the State of Indiana." Money cannot be appropriated from the state treasury by a joint resolution, but the legislative will may in some cases be expressed by a joint resolution. May v. Rice, 91 Ind. 546; State v. Bailey, 16 Ind. 46.

14. In 1851 the number of senators was fixed at 50 and the number of representatives at 100 and the number has been continued on that basis ever since.

15. As adopted in 1851, sec. 4 and sec. 5 provided for enumeration and apportionment on the basis of the number of white male voters. The amendment which struck out the word "white" was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast at the township election was 380,771; the total number of votes cast in favor of the amendment was 176,320; the total number of votes cast against the amendment was 136,279. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held that the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election, and 125,170 votes cast in favor of the amendment and 42,162 votes were cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force.

The last enumeration of voters was made in 1931 and disclosed that there were 865,001 white male voters and 25,892 colored male voters in the state. On the basis of the enumeration so made, the state should have been reapportioned by the Legislature of 1933.

It is the duty of the courts to decide whether an apportionment act complies with the requirements of the Constitution. The legislature can enact only one apportionment under each enumeration, but if the law is held invalid, a valid apportionment law may be enacted. Parker v. State, 133 Ind. 178; Denney v. State, 144 Ind. 503.

number of male inhabitants, above twenty-one years of age, in each: *Provided,* That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.

SEC. 6. A Senatorial or Representative district, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

SEC. 7. No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district, whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

SEC. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process, during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

SEC. 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session.[16]

SEC. 10. Each House, when assembled, shall choose its own officers, the President of the Senate excepted; judge the elections, qualifications, and returns of its own members; determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.[17]

SEC. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing, shall

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16. The legislative power of the General Assembly convened in special session is as unlimited as during a regular session. Woessner v. Bullock, 176 Ind. 166.

17. The officers of the Senate, in addition to the Lieutenant Governor, who is ex officio President of the Senate, are a President Pro Tem., Principal Secretary and Principal Doorkeeper. The officers of the House are a Speaker, Chief Clerk, Assistant Clerk and Doorkeeper. The rules of the House and Senate are very elaborate and are printed separately during each session of the legislature.

be entitled to no compensation, from the end of the said five days, until an organization shall have been effected.[18]

SEC. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

SEC. 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior, in its presence; but such imprisonment shall not, in any one time, exceed twenty-four hours.

SEC. 16. Each House shall have all powers necessary for a branch of the Legislative department of a free and independent State.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives.[19]

SEC. 18. Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending, shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill, by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.[20]

SEC. 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.[21]

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18. A quorum of the House is 67 members and a quorum of the Senate is 34 members.

19. Under this provision of the Constitution, all tax bills and bills to appropriate money for the maintenance of the state government and its institutions originate in the House.

20. If a law is signed by the presiding officers of the two Houses, the courts will not inquire whether it was properly passed. Evans v. Browne, 30 Ind. 514; Bender v. State, 53 Ind. 254; Western Union Co. v. Taggart, 141 Ind. 281.

21. Every act must have a title and designate a single subject, but the title should not express the object or purpose of the act, but the means by which it is to be accomplished. Indiana Ry. Co. v. Potts, 7 Ind. 681. The term "subject" means the thing about which the legislation is had and the term "matters" refers to the incidents or secondary things necessary to provide for the enforcement of the act. Board of Comrs. v. Scanlan, 178 Ind. 142.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding as far as practicable, the use of technical terms.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.[22]

SEC. 22. The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and empaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;[23]

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22. In amending a statute, the title of the act to be amended should be referred to by setting it out in the title of the amendatory act and the section as amended should be set forth and published at full length. Mankin v. Penn. Co., 160 Ind. 447; Hendershot v. State, 162 Ind. 69. In the amendment of an act, the old act or section need not be set out, but the act or section as amended should be set forth. Greencastle Co. v. State, 28 Ind. 382; Draper v. Falley, 33 Ind. 465.

23. As adopted in 1851, this section prohibited the passage of local and special laws in relation to fees and salaries. It was amended in 1881 to provide that the salaries of public officials may be graded according to population and the necessary services required. The amendment was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast at the township election was 380,771; the total number of votes cast in favor of the amendment was 181,887; and the total number of votes cast against the amendment was 136,177. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held that the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election and 128,731 votes were cast in favor of the amendment and 38,345 votes were cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force.

In relation to interest on money;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.[24]

SEC. 24. Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.[25]

SEC. 25. A majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the Presiding Officers of the respective Houses.[26]

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect, until the same shall have been published and circulated in the several counties of the State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law.[27]

Acts creating inferior courts are not invalid as being local or special. Woods v. McCay, 144 Ind. 315; Dearbeyne v. Greenwald, 186 Ind. 321; Stocking v. State, 7 Ind. 326; Eitel v. State, 33 Ind. 201.

Acts may be passed providing for the classification of cities if they are so worded that any city on attaining the requisite population will come under the law. Bumb v. City of Evansville, 168 Ind. 272.

24. Under the former decisions of the Supreme Court, it was held that the legislature alone has authority to determine whether a law can be made general or whether a local law is necessary. Gentile v. State, 29 Ind. 409; Wiley v. Bluffton, 111 Ind. 152; State v. Kolsem, 130 Ind. 434; Smith v. Indpls. St. Ry. Co., 158 Ind. 425; School City of Marion v. Forrest, 168 Ind. 94; Crist v. Molony, 187 Ind. 614. More recently, however, the Supreme Court has held that the question whether a general law can be made applicable is subject to judicial review. Heckler v. Conter, 206 Ind. 376.

25. Suits against the state are authorized by the act of 1889 and are brought in the Superior Court of Marion County and the issue is tried by all the judges sitting together without a jury.

26. It requires 51 votes in the House and 26 votes in the Senate to pass a bill. The Speaker of the House signs a bill first, the President of the Senate second, and the Governor last.

27. Acts which have an emergency clause become effective as soon as they are signed by the Governor. Acts which do not contain an emergency clause become effective when they are distributed to every county in the state and when the Governor has issued his proclamation. Mark v. State, 15 Ind. 98; Cain v. Goda, 84 Ind. 209; Jones v. Cavins, 4 Ind. 305; State v. Indiana Board, 155 Ind. 414; Sudbury v. Board, 157 Ind. 446; State v. Williams, 173 Ind. 414.

SEC. 29. The members of the General Assembly shall receive for their services, a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.[28]

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

ARTICLE 5.

EXECUTIVE

SECTION 1. The executive power of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years, in any period of eight years.

SEC. 2. There shall be a Lieutenant Governor, who shall hold his office during four years.

SEC. 3. The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the General Assembly.

SEC. 4. In voting for Governor and Lieutenant Governor, the electors shall designate, for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant Governor, as the case may be.

SEC. 6. Contested elections for Governor or Lieutenant Governor, shall be determined by the General Assembly, in such manner as may be prescribed by law.

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28. The members of the General Assembly receive $1,200 annually and 20 cents per mile for a round trip to the seat of government from their homes. The annual salary is paid as follows: In odd-numbered years, $600 on January 15 and $600 on February 15; in even-numbered years, $300 on the 15th of January, April, July, and October.

The term of 61 days for a regular session and 40 days for a special session includes all Sundays and holidays intervening.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant Governor who shall not have been five years a citizen of the United States and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices who shall not have attained the age of thirty years.

SEC. 8. No member of Congress or person holding any office under the United States or under this State shall fill the office of Governor or Lieutenant Governor.

SEC. 9. The official term of the Governor and Lieutenant Governor shall commence on the second Monday of January in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

SEC. 10. In case of the removal of the Governor from office or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the Lieutenant Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant Governor, declaring what officer shall then act as Governor; and such officer shall act accordingly, until the disability be removed or a Governor be elected.[29]

SEC. 11. Whenever the Lieutenant Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.[30]

SEC. 14. Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated; which House shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented

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29. In case of the removal, death, resignation or inability of both the Governor and Lieutenant Governor, the President of the Senate acts as Governor until the vacancy is filled.

30. This is known as the Governor's message. The regular message is read to the two houses of the General Assembly, convened in joint session, shortly after the convening of any regular or special session, but special messages may be submitted at any time.

to him, it shall be a law, without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State; who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.[31]

SEC. 15. The Governor shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

SEC. 16. He shall take care that the laws be faithfully executed.

SEC. 17. He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however,* That the General Assembly may, by law, constitute a council to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.[32]

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31. If a bill is passed over the veto of the Governor, it need not be again presented to him. State v. Denny, 118 Ind. 449. If a bill is presented to the Governor within the two days prior to adjournment and the Governor vetoes it within the five days after adjournment of the legislature, the bill must be presented to the next regular or special session of the legislature held thereafter. Woessner v. Bullock, 176 Ind. 166. When the Governor has filed a bill in the office of the Secretary of State, he cannot afterwards withdraw or file objection to the bill. Tarlton v. Peggs, 18 Ind. 24. If a bill contains an emergency clause and is not approved by the Governor, it will become a law on the expiration of the time given by the Constitution for the Governor to veto it. State v. Wheeler, 172 Ind. 578; Shutt v. State, 173 Ind. 689; Stalcup v. Dixon, 136 Ind. 9. The two days within which bills cannot be presented to the Governor include Sunday. State v. Grant Superior Court, 202 Ind. 197.

32. The commission on clemency, created in 1933, reviews all pardon cases and recommends its conclusions to the Governor. The Governor has exclusive power, under the rules prescribed by law, to grant reprieves, commutations and pardons, and to remit fines and forfeitures. Butler v. State, 97 Ind. 373. The power given to certain officers under the indeterminate sentence law to shorten the time of service of prisoners is not an exercise of the pardoning power. Miller v. State, 149 Ind. 607. Conditional pardons or paroles may be granted and the prisoner may be recommitted for a violation of the condition. Woodward v. Murdock, 124 Ind. 439.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any court; the Governor shall fill such vacancy, by appointment, which shall expire, when a successor shall have been elected and qualified.

SEC. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

SEC. 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

SEC. 21. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the Senate shall be equally divided, he shall give the casting vote.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected.[33]

SEC. 23. The Lieutenant Governor, while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person, acting as Governor, shall receive the compensation attached to the office of Governor.[34]

SEC. 24. Neither the Governor nor Lieutenant Governor shall be eligible to any other office, during the term for which he shall have been elected.

ARTICLE 6.

ADMINISTRATIVE

SECTION 1. There shall be elected, by the voters of the State, a Secretary, an Auditor and a Treasurer of State, who shall, severally, hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices, more than four years in any period of six years.

SEC. 2. There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor and Recorder, shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder, or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor, shall continue in office two years; and no person

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33. The salary of the Governor, as fixed in 1903, is $8,000 per year. Effective January 12, 1953, the salary of the Governor will be $15,000 per year.

34. The salary of the Lieutenant Governor, as fixed in 1951, is $11,500. In addition to this salary, he receives as President of the Senate, $1,200 per year, plus $5.00 per day during the continuance of a legislative session.

shall be eligible to the office of Treasurer or Sheriff, more than four years in any period of six years.[35]

SEC. 3. Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law.[36]

SEC. 4. No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof, during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties, out of which the same shall have been taken.

SEC. 5. The Governor, and the Secretary, Auditor, and Treasurer of State, shall, severally, reside and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

SEC. 6. All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law.

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

SEC. 8. All State, county, township, and town officers, may be impeached, or removed from office, in such manner as may be prescribed by law.[37]

SEC. 9. Vacancies in county, township, and town offices, shall be filled in such manner as may be prescribed by law.

SEC. 10. The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character.

Sec. 11. Notwithstanding any other provision hereof, the sheriff of each county shall be elected in the general election held in the year 1950

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35. The legislature can neither lengthen nor shorten the term of an office that is fixed by the Constitution. Howard v. State, 10 Ind. 99. Persons elected to fill vacancies in the office of clerk of the circuit court hold their offices for four years. Governor v. Nelson, 6 Ind. 496. When the term of a county officer is fixed by the Constitution, his successor must be elected at the general election held next before the date of the expiration of his term. Russell v. State, 171 Ind. 623.

36. The legislature may change the time of electing township officers and thereby extend the term of such officers beyond the time for which they were elected. State v. Menaugh, 151 Ind. 260. The legislature has authority to create county and township offices and to fix the qualifications of the holders. State v. Goldhait, 172 Ind. 210. It may be provided by law that offices created by the legislature may be filled by appointment. State v. Hall, 173 Ind. 145.

37. A prosecuting attorney is neither a state nor a county officer and therefore cannot be removed under Secs. 7 and 8 but may be removed under Sec. 12 of Art. 7. State v. Patterson, 181 Ind. 660.

and each four years thereafter. The term of office of each such sheriff shall be four years beginning upon the first day of January next following his election and no person shall be eligible to such office more than eight years in any period of twelve years: *Provided, however,* That any elected sheriff who shall hold said office on December 31, 1950, and who shall have been elected to said office for a period of less than two consecutive years immediately preceding, shall continue in said office for the four year term commencing January 1, 1951.[38]

ARTICLE 7.

JUDICIAL

SECTION 1. The judicial power of the State shall be vested in a Supreme Court, Circuit Courts and such other courts as the General Assembly may establish.[39]

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

SEC. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population, as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judges shall be elected by the electors of the State at large.[40]

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38. Sec. 11 was not a part of the Constitution as originally adopted. It was proposed by the General Assembly of 1947; readopted by the General Assembly of 1949; and was submitted to the voters at the general election held on November 7, 1950. The total number of votes cast at the general election of 1950 was 1,660,904; the total number of votes cast in favor of the amendment was 283,533; and the total number of votes cast against the amendment was 151,638. By virtue of the decision of the Supreme Court in the cases of In re Todd, 208 Ind. 168 and Swank v. Tyndall, 226 Ind. 204, this amendment is in force.

39. As adopted in 1851, the word "inferior" was used instead of the word "other" where it now occurs in this section. The amendment to this section was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast at the township election was 380,771; the total number of votes cast in favor of the amendment was 175,612, and the total number of votes cast against the amendment was 141,296. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held that the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election, and 116,570 votes were cast in favor of the amendment and 41,434 votes were cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force.

At the present time there is a Supreme Court, an Appellate Court of 6 judges, 82 circuit courts, 17 superior courts, 2 criminal courts, 3 probate courts, and 2 juvenile courts in the state.

40. The following table shows the counties embraced in each of the 5 districts into which the state is divided and the population of each district:

SEC. 4. The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

SEC. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.

SEC. 6. The General Assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution; but no Judge shall be allowed to report such decisions.[41]

SEC. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

SEC. 8. The Circuit Courts shall each consist of one Judge and shall have such civil and criminal jurisdiction as may be prescribed by law.

SEC. 9. The State shall, from time to time, be divided into judicial circuits; and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

SEC. 10. The General Assembly may provide, by law, that the judge of one circuit may hold the Courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any Judge, from sickness or other cause, to hold the Courts in his circuit, provision may be made, by law, for holding such courts.

SEC. 11. There shall be elected, in each Judicial Circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years.

SEC. 12. Any Judge or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

SEC. 13. The judges of the Supreme Court and Circuit Courts shall,

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First District.—Clay, Daviess, Dubois, Gibson, Greene, Knox, Martin, Monroe, Morgan, Orange, Owen, Parke, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh and Warrick. Population 540,954.

Second District.—Bartholomew, Brown, Clark, Crawford, Dearborn, Decatur, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Ripley, Rush, Scott, Shelby, Switzerland and Washington. Population, 365,560.

Third District.—Boone, Clinton, Fountain, Hamilton, Hendricks, Johnson, Marion, Montgomery, Putnam, Tippecanoe, Tipton, Vermillion, Vigo, Warren and White. Population 858,788.

Fourth District.—Adams, Allen, Blackford, Delaware, Fayette, Franklin, Grant, Hancock, Henry, Howard, Huntington, Jay, Madison, Randolph, Union, Wayne, Wells and Whitley. Population 729,201.

Fifth District.—Benton, Carroll, Cass, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, Lagrange, Lake, LaPorte, Marshall, Miami, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben and Wabash. Population, 933,293.

41. The decisions of the Supreme Court are published in volumes known as the "Indiana Reports." Prior to the adoption of the present Constitution, the Supreme Court reports were edited and published by Isaac Blackford, one of the judges of the Supreme Court.

at stated times, receive a compensation, which shall not be diminished during their continuance in office.[42]

SEC. 14. A competent number of Justices of the Peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

SEC. 16. No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office.

SEC. 17. The General Assembly may modify, or abolish, the Grand Jury system.

SEC. 18. All criminal prosecutions shall be carried on, in the name, and by the authority, of the State; and the style of all process shall be: "The State of Indiana."

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other Courts of Justice; but such tribunals or other Courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or Court.

SEC. 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, simplify, and abridge, the rules, practice, pleadings, and forms of the Courts of Justice. And they shall provide for abolishing the distinct forms of action at law, now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said Commissioners to reduce into a systematic code, the general statute law of the State; and said Commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to abridgement and amendment, as to said Commissioners may seem necessary or proper. Provisions shall be made, by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners.

SEC. 21. [Stricken out by constitutional amendment of 1932.][43]

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42. The annual salary of a judge of the Supreme or Appellate Court is $13,500, and a judge of a Circuit Court receives $5,400 to $9,600 annually from the state treasury according to the population of the judicial circuit.

43. As adopted in 1851, this section read as follows: "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." The following amendment to this section was proposed by the General Assembly of 1897 and readopted by the General Assembly of 1899: "The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice." This proposed amendment was submitted to the voters at the general election held on November 6, 1900. The total number of votes cast at the general

ARTICLE 8.

EDUCATION

SECTION 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.[44]

SEC. 2. The Common School fund shall consist of the Congressional Township fund, and the lands belonging thereto;

The Surplus Revenue fund;

The Saline fund and the lands belonging thereto;

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election of 1900 was 664,094; the total number of votes cast in favor of the amendment was 240,031; and the total number of votes cast against the amendment was 144,072. In 1901 in the case known as In re Denny, 156 Ind. 104, the Supreme Court held that the proposed amendment had not been ratified because it did not receive the affirmative vote of a majority of all the voters who voted at the general election held on November 6, 1900. The General Assembly of 1903 proposed and the General Assembly of 1905 readopted the same amendment which had been defeated at the general election of November 6, 1900. This proposed amendment was submitted to the voters at the general election held on November 6, 1906. The total number of votes cast at the general election of 1906 was 589,044; the total number of votes cast in favor of the amendment was 39,061; and the total number of votes cast against the amendment was 12,128. The General Assembly of 1907 proposed and the General Assembly of 1909 readopted the same amendment which had been defeated at the general election of November 6, 1900, and the general election held on November 6, 1906. This proposed amendment was submitted to the voters at the general election held on November 8, 1910. The total number of votes cast at the general election of 1910 was 627,133; the total number of votes cast in favor of the amendment was 60,357; and the total number of votes cast against the amendment was 18,494. In 1912 in the case known as In re Boswell, 179 Ind. 292, the Supreme Court held that the proposed amendment had been rejected because it did not receive the affirmative votes of a majority of all the voters who voted at the general election held on November 8, 1910. The following amendment to this section was proposed by the General Assembly of 1927 and readopted by the General Assembly of 1929: "That the Constitution of the State of Indiana be amended by striking out all of section 21 of Article VII." This proposed amendment was submitted to the voters at the general election held on November 8, 1932. The total number of votes cast at the general election of 1932 was 1,600,484; the total number of votes cast in favor of the amendment was 439,949; and the total number of votes cast against the amendment was 236,613. In 1935 in the case known as In re Todd, 208, Ind. 168, the Supreme Court held that a proposed amendment to the Constitution is ratified if it receives the affirmative votes of a majority of the voters who vote on the proposed amendment even though the affirmative vote so cast is not a majority of the voters who voted at the election at which the amendment is submitted. Since the proposed amendment submitted at the general election of November 8, 1932, received a majority of the votes cast on the amendment, it was ratified.

44. The compulsory school law is not in violation of this section. State v. Bailey, 157 Ind. 324. Local school corporations have authority to levy a tax for the support of common schools. Shephardson v. Gillette, 133 Ind. 125.

The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county Seminaries, and the moneys and property heretofore held for such Seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estates which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the swamp lands, granted to the State of Indiana by the act of Congress of the twenty-eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.

SEC. 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.

SEC. 5. If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be reinvested, for the benefit of such county.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

SEC. 7. All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction; who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

ARTICLE 9.

STATE INSTITUTIONS

SECTION 1. It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane.

SEC. 2. The General Assembly shall provide houses of refuge, for the correction and reformation of juvenile offenders.

SEC. 3. The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

ARTICLE 10.

FINANCE

SECTION 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.[45]

SEC. 2. All the revenue derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

SEC. 3. No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

SEC. 4. An accurate statement of the receipts and expenditures of the public money, shall be published with the laws of each regular session of the General Assembly.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow the money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

SEC. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said

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45. Taxes must be uniform and equal throughout the unit in which they are levied. Board v. State, 155 Ind. 604. The law providing for the deduction of mortgage indebtedness is valid. State v. Smith, 158 Ind. 543.

act, passed January 29, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State.[46]

SEC. 8. The General Assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law.[47]

ARTICLE 11.

CORPORATIONS

SECTION 1. The General Assembly shall not have power to establish, or incorporate, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

SEC. 2. No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

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46. Sec. 7 was not a part of the Constitution as originally adopted. It was proposed by the General Assembly of 1871, readopted by the General Assembly of 1872, convened in special session, and was ratified at a special election held on February 18, 1873. There were 158,400 votes cast in favor of the amendment and 1,030 votes cast against it. On March 7, 1873, Governor Thomas A. Hendricks issued his proclamation declaring the amendment in force.

47. Sec. 8 was not a part of the Constitution as originally adopted. It was proposed by the General Assembly of 1923; readopted by the General Assembly of 1925; and was submitted to the voters at the general election held on November 2, 1926. The total number of votes cast at the general election of 1926 was 1,052,994; the total number of votes cast in favor of the amendment was 239,734; and the total number of votes cast against the amendment was 212,224. The General Assembly of 1927 proposed and the General Assembly of 1929 readopted the same amendment which had been voted upon at the general election of November 2, 1926. This proposed amendment was submitted to the voters at the general election held on November 8, 1932. The total number of votes cast at the general election of 1932 was 1,600,484; the total number of votes cast in favor of the amendment was 701,045; and the total number of votes cast against the amendment was 209,076. By virtue of the ruling in the case of In re Todd, 208 Ind. 168 and the decision of the court rendered on April 7, 1948, in the case of Swank et al. v. Tyndall et al. 226 Ind 204, this amendment is in force.

SEC. 6. [Stricken out by constitutional amendment ratified by the electors at the general election held November 5, 1940.][48]

SEC. 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed, by law, to individuals loaning money.

SEC. 10. [Stricken out by constitutional amendment ratified by the electors at the general election held November 5, 1940.][49]

SEC. 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

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48. As adopted in 1851, this section read as follows: "The stockholders in every bank or banking company shall be individually responsible, to an amount, over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company." The following amendment to this section was proposed by the General Assembly of 1937 and readopted by the General Assembly of 1939: "That the Constitution of the State of Indiana be amended by striking out Sec. 6 of Article 11." This proposed amendment was submitted to the voters at the general election held on November 5, 1940. Pursuant to Chapter 59, page 404 of the Acts of 1939, the secretary of state certified to the governor the vote on this amendment: Ayes, 355,578; Noes, 267,589. There were 1,729,409 votes cast at the election. Pursuant to said act, Governor M. Clifford Townsend issued his proclamation on November 22, 1940. In 1935 in the case known as In re Todd, 208 Ind. 168, the Supreme Court held that a proposed amendment to the Constitution is ratified if it receives the affirmative votes of a majority of the voters who vote on the proposed amendment even though the affirmative vote so cast is not a majority of the voters who voted at the election at which the amendment is submitted. Since the proposed amendment received a majority of the votes cast on the amendment, it was ratified.

49. As adopted in 1851, this section read as follows: "Every bank or banking company, shall be required to cease all banking operations, within twenty years from the time of its organization, and promptly thereafter close its business." The following amendment to this section was proposed by the General Assembly of 1937 and readopted by the General Assembly of 1939: "That the Constitution of the State of Indiana be amended by striking out Sec. 10 of Article 11." This proposed amendment was submitted to the voters at the general election held on November 5, 1940. Pursuant to Chapter 59, page 404 of the Acts of 1939, the Secretary of State certified to the Governor the vote on this amendment: Ayes, 325,280; Noes, 242,846. There were 1,729,409 votes cast at the election. Pursuant to said act, Governor M. Clifford Townsend issued his proclamation on November 22, 1940. Under the decision of the Supreme Court in the case of In re Todd, 208 Ind. 168, this amendment, having received a majority of the votes cast on the amendment, was ratified.

SEC. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.[50]

SEC. 14. Dues from corporations shall be secured by such individual liability of the stockholders, or other means, as may be prescribed by law.[51]

ARTICLE 12.

MILITIA

SECTION 1. The militia shall consist of all able-bodied male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained in such manner as may be provided by law.[52]

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster and Commissary Generals.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

SEC. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and fix the rank of all staff officers.

SEC. 5. The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law.

SEC. 6. No person, conscientiously opposed to bearing arms, shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

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50. This section applies to municipal corporations. Town of Longview v. City of Crawfordsville, 164 Ind. 117.

51. As adopted in 1851, the section read as follows: "Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law." The present amendment was proposed by the General Assembly of 1937, readopted by the General Assembly of 1939, and voted on at the general election held on November 5, 1940. The total number of votes cast in favor of the amendment was 344,262, and the total number of votes cast against the amendment was 229,370. There were 1,729,409 votes cast at the election. Under the decision of the Supreme Court in the case of In re Todd, 208 Ind. 168, this amendment, having received a majority of the votes cast on the amendment, was ratified. On November 22, 1940, Governor M. Clifford Townsend issued his proclamation pursuant to Chapter 59, page 404 of the Acts of 1939.

52. As adopted in 1851 the word "white" occurred before the word "male," thus restricting compulsory service in the national guard to white male persons. The amendment to this section was proposed by the General Assembly of 1933, readopted by the General Assembly of 1935, and was voted on at the general election of November 3, 1936. There were 426,031 votes cast in favor of the amendment and 398,201 votes cast against it. On December 14, 1936, Governor Paul V. McNutt issued his proclamation declaring the amendment in force.

ARTICLE 13.

POLITICAL AND MUNICIPAL CORPORATIONS

SECTION 1. No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporation shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.[53]

ARTICLE 14.

BOUNDARIES

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded, on the East, by the meridian line, which forms the western boundary of the State of Ohio; on the South, by the Ohio river, from the mouth of the Great Miami river to the mouth of the Wabash river; on the West, by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash river; and, thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the North, by said east

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53. The original Article 13 as adopted in 1851 was stricken out and the present Article inserted in 1881. The original Article was as follows:

Section 1. No Negro or Mulatto shall come into or settle in the State, after the adoption of this Constitution.

Sec. 2. All contracts made with any Negro or Mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such Negro or Mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Sec. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such Negroes and Mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Sec. 4. The General Assembly shall pass laws to carry out the provisions of this article.

The present amendment was proposed by the General Assembly of 1877, readopted by the General Assembly of 1879, and voted on at the township election of April 5, 1880. The total number of votes cast at the township

and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.[54]

SEC. 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio river, and with the State of Illinois on the Wabash river, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE 15.

MISCELLANEOUS

SECTION 1. All officers, whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.[55]

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.[56]

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election was 380,771; the total number of votes cast in favor of the amendment was 176,981; and the total number of votes cast against the amendment was 126,999. In State v. Swift, 69 Ind. 505, decided at the May term, 1880, the Supreme Court held that the amendment had not been adopted because it had not received a majority of the votes cast at the election. Accordingly, the amendment was resubmitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election, and 126,221 votes were cast in favor of the amendment and 36,435 votes were cast against it. On March 24, 1881, Governor Albert G. Porter issued his proclamation declaring the amendment in force.

Indebtedness created by the improvement or repair of streets does not come within this article. Quill v. Indianapolis, 124 Ind. 292; New Albany v. McCulloch, 127 Ind. 500; Cason v. City of Lebanon, 153 Ind. 567. Bonds issued for the improvement of highways are not debts of the county or township. Smith v. Board, 173 Ind. 364. This article applies to bonds issued by cities and towns to build schoolhouses. Town of Winamac v. Huddleston, 132 Ind. 217; Wilcoxen v. City of Bluffton, 153 Ind. 267. The debt of a school city is not considered as a part of the corresponding civil city. Heine v. City of Terre Haute, 161 Ind. 44; Campbell v. City of Indianapolis, 155 Ind. 186. The issuance of gravel road bonds is not governed by this section limiting indebtedness. Brown v. Guthrie, 185 Ind. 669.

54. The boundaries of Indiana were not fixed by the adoption of the state Constitution, but by Congress and their recital in the Constitution is merely a memorandum thereof. Watts v. Evansville, etc. R. Co., 123 N. E. 709. Low-water mark on the north side of the Ohio river is the southern boundary of the state. Welsh v. State, 126 Ind. 71.

55. The legislature cannot appoint officers. State v. Hyde, 121 Ind. 20; State v. Peele, 121 Ind. 495; State v. Gorby, 122 Ind. 17.

56. The 1923 General Assembly proposed the following amendment of this section: "When the duration of any office is not provided for by this Constitution it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

SEC. 4. Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office.

SEC. 5. There shall be a Seal of State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed with the State Seal, and attested by the Secretary of State.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county, under that area, be further reduced.

SEC. 8. No lottery shall be authorized; nor shall the sale of lottery tickets be allowed.

SEC. 9. The following grounds owned by the State in Indianapolis, namely: The State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven, as lies north of the arm of the Central Canal,[57] shall not be sold or leased.

SEC. 10. It shall be the duty of the General Assembly, to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

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the General Assembly shall not create any office, the tenure of which shall be longer than four (4) years, nor shall the term of office or salary of any officer fixed by this Constitution or by law be increased during the term for which such officer was elected or appointed." This amendment was readopted by the 1925 General Assembly and was submitted to the voters at the general election on November 2, 1926. The total number of votes cast in favor of the amendment was 182,456; the total number of votes cast against the amendment was 177,748; and the total number of votes cast at the general election of 1926 was 1,052,994. In the case of Swank et al. v. Tyndall et al. 226 Ind. 204, decided April 7, 1948, the Supreme Court held, in reference to this amendment, that the law as stated in the Swift, Denny, and Boswell cases supra, constituted the law with reference to the method of ascertaining the majority vote on proposed amendments up to the date of the general election of 1932; that the Todd case decision had no effect whatever on said proposed amendment and that said proposed amendment had been rejected by the voters at the 1926 general election.

This section does not apply where an office is created but no tenure is fixed, Clem v. State, 33 Ind. 418; nor does it prevent an officer from holding over until his successor is elected and qualified, State v. Harrison, 113 Ind. 434. The legislature may change the time for electing officers created by statute and thereby extend the terms of such officers beyond a period of four years, Spencer v. Knight, 177 Ind. 564.

57. Out-lot No. 147 is now Camp Sullivan, popularly known as Military Park and is located in the City of Indianapolis.

ARTICLE 16.

AMENDMENTS

SECTION 1. Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.[58]

SCHEDULE.

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force, until they shall expire or be repealed.

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58. Under the rulings of the Supreme Court made prior to 1935, a proposed amendment, to be adopted, must be ratified by a majority of the electors of the state voting at the election at which the amendment is submitted. If the amendment is submitted at a general election, it must receive a majority of the votes cast at the general election, and if submitted at a special election, it must receive a majority of the votes cast at the special election. State v. Smith, 69 Ind. 505; In re Denney, 156 Ind. 104; In re Boswell, 179 Ind. 292. In 1935, in the case known as In re Todd, 208 Ind. 168, the Supreme Court held that if a proposed amendment is submitted to the voters and if more votes are cast in favor of than in opposition to the amendment, the amendment is ratified even though the total vote cast in favor of the amendment is less than a majority of the total number of votes cast at the election at which the amendment is voted on. If an amendment is submitted to the electors and does not receive a majority of the votes cast, it is rejected. In re Boswell, 179 Ind. 292. The legislature has no authority to draft a new constitution or amendments to an existing constitution and submit them to the voters at the next general election. Ellingham v. Dye, 178 Ind. 336.

Second. All indictments, prosecutions, suits, pleas, plaints, and other proceedings, pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as is now provided by law.

Third. All fines, penalties, and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force, and inure to the use of those concerned.

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.

Fifth. The Governor, at the expiration of the present official term, shall continue to act, until his successor shall have been sworn into office.

Sixth. There shall be a session of the General Assembly, commencing on the first Monday of December, in the year one thousand eight hundred and fifty-one.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution.

Eighth. The first general election under this Constitution, shall be held in the year one thousand eight hundred and fifty-two.

Ninth. The first election for Governor, Lieutenant Governor, Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorneys, Secretary, Auditor and Treasurer of State, and State Superintendent of Public Instruction, under this Constitution, shall

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Under the provisions of Art. 16, 453 amendments to the Constitution have been proposed since 1851. Many of these amendments were identical in the purpose they were designed to attain and accordingly comparatively few actually dissimilar amendments have been suggested. Of the 453 amendments proposed, 262 were defeated in the House in which they were introduced; 1 was passed by the House in which it was introduced but was never transmitted to the second House; 66 were adopted by the House in which they were introduced but were defeated in the second House; 4 were adopted by both Houses of one General Assembly but were never considered by either House of the succeeding General Assembly; 39 were adopted by both Houses of one General Assembly but were defeated in the first House in which they were reconsidered at the succeeding General Assembly; 34 were adopted by both Houses of one General Assembly and by the first House by which they were reconsidered at the succeeding General Assembly, but were defeated in the second House; 24 were adopted by both Houses of one General Assembly, were then submitted to the voters, but were held invalid before the election was held; 1 was adopted by both Houses of one General Assembly, passed both Houses of the second General Assembly in separate resolutions, but was held invalid; 1 was adopted by both Houses of one General Assembly, passed the first House by which it was reconsidered at the succeeding General Assembly but was not transmitted to the second House of the second General Assembly; 1 was adopted by both Houses of two succeeding General Assemblies but was never submitted to the voters; 7 were withdrawn by author in the house of introduction.

be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office when this Constitution shall go into effect, shall continue in their respective offices, until their successors shall have been elected and qualified.

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution (except as in this Constitution otherwise provided), shall continue in office, until the term for which such person has been, or may be, elected, shall expire: *Provided*, That no such person shall continue in office, after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office, shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this Constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law.

The following amendments have been submitted to the voters and each received more votes for than against but not a majority of the votes cast in the election at which they were submitted; under the decision in the Todd case such majority of votes was not necessary for ratification. The date of the election, the vote for and against each amendment is given.

Lawyers' qualifications, Nov. 6, 1900: For, 240,031; against, 144,072.
Supreme Court membership, Nov. 6, 1900: For, 314,710; against, 178,960.
Lawyers' qualifications, Nov. 6, 1906: For, 39,061; against, 12,128.
Lawyers' qualifications, Nov. 8, 1910: For, 60,357; against, 18,494.
Registration of voters, Nov. 2, 1926: For, 198,579; against, 184,684.
Salaries and terms—Increase, Nov. 2, 1926: For, 182,456; against, 177,748.
Income tax, Nov. 2, 1926: For, 239,734; against, 212,224.
Income tax, Nov. 6, 1932: For, 701,045; against, 209,076.
Lawyers' qualifications, Nov. 6, 1932: For, 439,949; against, 236,613.
State militia, Nov. 3, 1936: For, 426,031; against, 398,201.
Stockholders' liability, Nov. 5, 1940: For, 355,578; against, 267,589.
Limitation on banks, Nov. 5, 1940: For, 325,280; against, 242,846.
Corporation dues, Nov. 5, 1940: For, 344,262; against, 229,370.
Sheriff's term, Nov. 7, 1950: For, 283,533; against, 151,638.

Following are the amendments which have been submitted to the voters, giving the date of the election, the vote for and the vote against. All were defeated because the negative was larger than the affirmative vote.

Registration of voters, Sept. 6, 1921: For, 90,269; against, 110,333.
Enumeration and apportionment, Sept. 6, 1921: For, 76,963; against, 117,890.
Veto of appropriations, Sept. 6, 1921: For, 83,265; against, 101,790.
State officers—Terms, Sept. 6, 1921: For, 74,177; against, 113,300.
County officers—Terms, Sept. 6, 1921: For, 82,389; against, 115,139.
Prosecuting attorneys—Terms, Sept. 6, 1921: For, 76,587; against, 116,683.
Lawyers' qualifications, Sept. 6, 1921: For, 78,431; against, 117,479.
State Superintendent—Appointment, Sept. 6. 1921: For, 46,023; against, 149,294.
Taxation, Sept. 6, 1921: For, 31,786; against, 166,186.
Income tax, Sept. 6, 1921: For, 39,005; against, 157,827.
Militia, Sept. 6, 1921: For, 55,027; against, 142,909.
Salaries—Increase, Sept. 6, 1921: For, 80,191; against, 117,140.
Apportionment, Nov. 2, 1926: For, 183,828; against, 189,928.

Thirteenth. At the time of submitting this Constitution to the electors, for their approval or disapproval, the article numbered thirteen, in relation to Negroes and Mulattoes, shall be submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye" or "No." And if a majority of the votes cast shall be in favor of said article, then the same shall form a part of this Constitution; otherwise, it shall be void, and form no part thereof.

Fourteenth. No article or section of this Constitution shall be submitted as a distinct proposition, to a vote of the electors, otherwise than as herein provided.

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same, by proper metes and bounds, of equal portions, as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same, out of the territory thus designated.

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied, according to the intention of the grantor.

Done in Convention, at Indianapolis, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-one; and of the Independence of the United States, the seventy-fifth.

THE PROPOSED CONSTITUTION OF INDIANA

By JACOB PIATT DUNN

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THE PROBLEM.

The Constitution of Indiana provides a mode for special amendment of its own provisions, but makes no provision for general revision, or the adoption of a new constitution, beyond the declarations that "the people have, at all times, an indefeasible right to alter and reform their government;" and "the legislative authority of the State shall be vested in the General Assembly."

The mode for special amendment provides that "while an amendment or amendments which shall have been agreed upon, by one General Assembly shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed." The Supreme Court has decided that an amendment once submitted to the people remains "pending," or "awaiting the action" of the electors, until "a majority of the electors of the State" vote either for or against it.

The Constitution provides that "every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." In 1897 an amendment was proposed, that the legislature might prescribe qualifications for admission to the bar. It was adopted by two legislatures and has been voted on three times; in 1900, 1906 and 1910, without a decisive vote either way. Under the Supreme Court decisions it is still "pending;" and bars all other special amendments.

Question: How may the "indefeasible right to alter and reform their government" be exercised by the people?

I.

The Right of Self-Government.

The right of the people of any American State to revise or alter their form of government, at any time, is based on the broad principles asserted in the Declaration of Independence, and never since questioned by Americans: "We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

This right is not dependent on any written constitution, and could not be taken away by one. It does not admit of question. It is self-evident, inherent, indefeasible, and inalienable.

It is declared in every American constitution, not for the purpose of conferring it, but for the purpose of emphasizing it as the basic principle of every constitution. There is no constitution in existence in this country, and there has never been one, which did not rest wholly on that natural right. Its assertion was the opening declaration of the Indiana Constitution of 1816 as it is of the present Constitution, which says, in the first section of the first article, that "All power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authorities and instituted for their peace, safety and well being. For the advancement of these ends, the people have, at all times, an indefeasible right to alter and reform their government."

It should be borne in mind that this declaration does not create any right, but simply recognizes one that exists, perpetual, inalienable, unchangeable, inherent in the people. It is not an abstract principle, but a practical, available right, that can be acted upon at any time, and has been acted upon time and again in the United States.

It is so universally recognized that it has been seriously questioned in the higher courts only once and that was in the extreme case of the reconstruction constitution of Tennessee.

In 1861 the legislature of Tennessee decided for secession, but the State was occupied by Union troops, and the secession government disappeared, leaving only the United States military government in its place. Under protection of this, a committee of Union men called a constitutional convention, which met at Nashville on January 9, 1864, and proposed amendments which were adopted on February 22 following. The amendments were offered to the old Constitution of

1834, but in the election the suffrage was forcibly restricted to Union men, and negroes were allowed to vote, notwithstanding the prohibition of the Constitution.

The Supreme Court of Tennessee upheld the amended constitution on the proposition that "All power is inherent in the people, and all free governments are founded on that authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have, at all times, an unalterable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper."

These words were quoted from the Tennessee Constitution of 1834, but the court added: "These principles in this country are well recognized political truths independent of any written constitution or laws." (3 Coldwell, p. 569.)

But some persons have imagined that because the sixteenth article of the Constitution of Indiana provides for amendments to it, the Constitution can not be changed in any other way. This error is based on a misunderstanding of the legal maxim that "the expression of one mode is the exclusion of others." This maxim, however, has no application to constitutional provisions. It applies to legislation for the government of individual citizens, and properly so, because the natural rights of the individual to life, liberty and property have sometimes to be surrendered for the public safety or welfare, and it would be dangerous to all if either could be taken except in the mode expressly provided by law.

But in dealing with the whole people this would be absurd, for "all power" is inherent in the people, and can be exercised by them except as they voluntarily prohibit its exercise to themselves. Hence it is universally recognized that a constitutional provision of a method in which a thing may be done carries no restriction of doing a different thing—especially when the constitution itself recognizes that different thing as an inalienable and indefeasible right. (Jameson, The Constitutional Convention, secs. 395, 396, 574.)

It was the fear of a different construction being put on the National Constitution that caused adoption of the ninth amendment, which reads: "The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people." This provision, not usually found in State constitutions, was not really necessary, but was meant to guard jealously the position that the National Government had only those powers granted to it by the Constitution.

This distinction between the constitutional powers of the United States and those of the individual States is one as to which there is quite common misunderstanding. The affairs of the Nation are so much larger than those of the State, and the acts of Congress occupy so much more of the attention of the public than the acts of State legislatures that it is not always easy to realize that the powers of a State legislature are broader in their scope than those of Congress.

The United States, however, is a government of delegated powers and Congress can act only within those powers. All remaining powers belong to the States and the people, as provided by the tenth amendment to the National Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

In its division of "the powers of government" into legislative, executive and judicial, the Constitution of Indiana vests "the legislative authority of the State" in the General Assembly, with no restrictions except those elsewhere made in the same instrument. The question as to the exercise of power by Congress is, "Does the Constitution authorize it?" The question as to the State legislature is, "Does the Constitution prohibit it?" (Cooley's Constitutional Limitations, p. 242.)

When Hon. A. C. Harris appeared before the Indiana Senate Committee to argue against the bill for the proposed constitution, he conceded that the legislature had power to call a constitutional convention, although the Constitution makes no express provision for it, and does make express provision for special amendment to the Constitution. When asked where it got the power to call a convention, that not being mentioned in the Constitution, he replied that the power was "inherent in the legislature." Of course, neither Mr. Harris nor any other lawyer will contend that the legislature has any powers not conferred on it by the Constitution. The legislature was created by the Constitution, and could not possibly get any power from any other source. What he evidently meant was that the power was inherent in "the legislative authority of the State," which the Constitution vests in the legislature. On this basis, the legislative authority is unquestionable.

The general rule of law as to calling constitutional conventions, where the Constitution makes no express provision for them, and where the Constitution does make provision for special amendments, is thus stated by Jameson: "Under the general grant of legislative power found in our State constitutions, a legislature is competent to provide by law for all exigencies requiring provisions of a legislative nature, so far as it is not restrained by rules of morality, or by express constitutional inhibitions. This is believed to cover the whole case. The making of provision for the assembling of conventions, and the hedging of them about with the restrictions needed as well for their efficiency as for the safety of the commonwealth, is emphatically a matter of legislation. * * * The legislation necessary to initiate and to temper the operations of a convention no department of the government is competent to effect but the legislature; the sovereign itself could not do it, nor the electors—bodies whose organization is such as to make deliberation upon the details of laws impossible." (Constitutional Conventions, p. 388.)

If there were any possible question as to the general power of revision, or adopting a new Constitution, from a theoretical point of

view, the question has been settled beyond dispute by the action of State after State, forming a line of precedents that are conclusive. Says Jameson: "The second subdivision, consisting of conventions called for legitimate constitutional purposes by the respective State legislatures, under their general legislative power, without the special authorization of their constitutions, comprises twenty-seven conventions. * * * It must be laid down as among the established prerogatives of our General Assemblies that the constitution being silent, whenever they deem it expedient, they may call conventions to revise their fundamental laws." (Constitutional Conventions, page 211.)

We have, therefore, two distinct modes of constitutional alteration, universally recognized in the United States; one of general revision or adoption of a new constitution, and the other of special amendment of an existing constitution. Their existence in Indiana does not differ from their existence in other States of the Union. Originally general revision was the only method in use; and this continued until 1818, when the Connecticut constitutional convention introduced the system of special amendment which is provided in article 16 of the Indiana Constitution. It was aimed there, as here, to avoid the trouble and expense of general revision when only slight amendment was desired.

The example of Connecticut was followed by Maine and Alabama in 1819, by Massachusetts in 1820, and by New York in 1821, since when it has been generally adopted; but it is always adopted as a supplementary method, and not as a substitute for general revision; and this is a commonly recognized historical fact.

It is stated by Borgeaud as follows: "This method of partial revision, inaugurated in 1818, and from this time forth adopted in most of the new constitutions, has become firmly adopted in practice. By adopting this system, American democracy did not, however, intend to discard that of revision prepared by special conventions, whose work is likewise submitted to the verdict of the people. Both systems, in the form they had taken in New England, and which the adhesion of New York had served to spread throughout the Union, were nothing but the application to two different cases, of the theory that the electoral body itself is the whole depository of constituent power. Each one had its place in the edifice of which this theory is the very cornerstone." (Adoption and Amendment of Constitutions in Europe and America, p. 170.)

It may possibly be suggested that the fact that the Indiana Constitution of 1816 provided expressly for revision by convention, and that this was dropped in the Constitution of 1851, constitutes a denial by the latter instrument of the right to call a convention. This question is considered by Jameson, and after giving a list of the States in which this same situation existed, he says: "Now, in all these cases, save those of Indiana and Vermont, the dropping of the provision relating to the call of conventions was not regarded as a prohibition of the exercise of that power thereafter, because the

States have all, except those two, since called conventions, without question or objection; and, doubtless, upon the principles above explained, Vermont and Indiana might at any time have called them." (Constitutional Conventions, sec. 574i.)

II.

Intent of the Indiana Constitution.

While the right of the people to adopt a new constitution at any time is clear under the general principles of American law, it is equally clear that it was the actual intent of the makers of the present Constitution to preserve that right, as well as the right of special amendment. It is also plain that they meant to preserve it by simply not prohibiting it. In fact it is by virtue of this distinction between what is prohibited and what is not prohibited that our present Constitution itself exists. The Constitution of 1816 made no provision for separate amendments, and its only provision as to a new constitution, aside from the declaration of right above mentioned, was that "every twelfth year after this Constitution shall have taken effect" a vote of the people should be taken for or against a constitutional convention, and, if the vote was favorable, the legislature should call an election for a convention.

But, in fact, no such vote was taken in 1828, and not in 1840. In 1849, however, there was a strong demand for a new constitution. The breaking down of the State's internal improvement system had made necessary a large increase of private corporations, each of which had to be formed by a special act of the legislature, and this made an intolerable burden. There were also other features in which changes were desired, and on January 15, 1849, the General Assembly passed a law calling for a vote on the question of a constitutional convention. There was considerable opposition to the convention, but at the election on August 6, 1849, it was decided for by a vote of 74,895 to 53,639, as announced by the Secretary of State.

The convention itself recognized fully that it had not been called as provided by the Constitution of 1816, and the matter came into discussion in connection with the question of amendment, as to which there were conflicting views. The present provision for amendment (Article 16) was proposed by Robert Dale Owen, but there were others who wanted to make a provision for a convention, as in the old Constitution.

In the debate, John Pettit, of Tippecanoe, afterward judge of the Supreme Court, and recognized as one of the ablest lawyers in the convention, said:

"Sir, I am clearly of the opinion that we are encumbering our records too much with these propositions for amendment. All experience shows us that the people of the several States of the Union will amend the constitutions of the States whenever and in whatever mode they see fit. Thirty years ago our fathers formed a constitu-

tion in which they inserted a provision that it might be amended in such a mode, and in no other manner. Yet, here we are proposing to violate that very provision." (Debates, page 1938.)

This last proposition was controverted by J. B. Howe, of Lagrange, who desired to limit the power of amendment. He said: "The gentleman from Tippecanoe has stated that in the old Constitution there is a prohibitory clause preventing amendment or alteration of the Constitution unless it be made in the manner set forth therein. I think he is a little mistaken, however, as to the text. The Constitution prescribes the manner in which it shall be done, but it does not deny, or prevent by injunction, the making of amendments in any other way. It is for that reason I propose to add the words that no convention for the purpose of amending the Constitution shall be called at any other time than once in twelve years. I wish to exclude a conclusion by declaring that amendments shall not be made in any other manner than herein prescribed."

This view was indorsed by Robert Dale Owen, who said: "I agree with the gentleman from Lagrange that the gentleman from Tippecanoe has taken an incorrect view of this subject. He has declared that we are here in direct violation of a provision of the old Constitution. The gentleman from Lagrange has well shown that there was no prohibition in regard to the matter. It was well said that the question of amendment should be submitted every twelve years; but it was not said that the people might not, or that the legislature might not pass a law at other periods, calling a convention to amend the Constitution." (Debates, p. 1938.)

But Mr. Owen was equally in opposition to the proposal to restrict the right of revision. He proceeded:

"Now the gentleman from Lagrange proposes that there shall be in the Constitution an absolute prohibition in regard to this matter. There are some things, sir, that it is in vain to do, in legislation. We must never, in legislation, attempt impossibilities. The gentleman is attempting an impossibility now; he is attempting that which he has no right, which this Constitution has no right to do—which no power on earth has any right to do. [Applause.]

"If we have a right to say that the legislature shall not, in twelve years, pass a law calling a convention, we have an equal right to say that they shall not call a convention in twenty years, or in fifty years. We have an equal right to say that there shall be no convention held within our time or within that of our children. Shall we, by a section to be inserted in our Constitution, declare that we are infallible, and that what we now enact shall not be changed?"

The views of Mr. Owen on this subject are of special importance because they were fully adopted by the convention, on all points, by overwhelming votes; and he made it clear that he had no intention of restricting the power of revision, but on the contrary, he desired to furnish an easy and simple mode of amendment which would obviate the necessity of calling a convention. He said:

"I am not prepared to say as to how far the abstract right of the legislature extends in regard to submitting to the popular vote propositions of amendment; nor am I prepared to say that as a matter of abstract right they may not do so whenever they think it proper and expedient. But I say if you insert such a provision as this, placing no greater check than that of requiring two successive legislatures to act affirmatively upon the question before it shall be submitted to the people, I am convinced that it will be entirely satisfactory." (Debates, p. 1939.)

This same idea of avoiding the trouble and expense of an unnecessary convention was general. When the plan of separate amendments was first offered, A. C. Stevenson, of Putnam, said:

"It will be no easy or brief task for this convention to remodel the whole Constitution. It will take this convention at least four months to do it; whereas, if there had been a provision of this kind in the old Constitution the necessary amendments might have been made with a very trifling expense." (Debates, p. 1258.)

The same argument was used afterward (Debates, pp. 1916, 1918), and it was clearly shown that the aim of the convention was not to limit the right of revision, but to extend it by the system of special amendment.

It is well-settled law that the debates of a constitutional convention may be looked to in determining the meaning of a provision of the Constitution; and it is equally well-settled that the whole instrument is to be construed as one, giving full effect if possible to every section. (Cooley's Constitutional Limitations, p. 91.) By both of these tests it is evident that the provisions for amendment in article 16 are not intended as any limitation on the right of the people to adopt a new constitution whenever they so desire, which is declared in article 1. The only restriction is that if they desire to proceed by special amendment, under article 16, they must follow strictly the method there provided, in order to make the amendment valid. This principle is so firmly and universally settled that anything more than its statement would be superfluous.

It is fortunate for the people of Indiana that this general power is reserved to them, for the system of special amendment has come to grief in a way that the constitution makers of 1851 never contemplated. It is impossible to read their statements and believe that they ever dreamed that the Supreme Court would hold that an amendment once submitted to the people and in which the majority of the people did not take enough interest to vote, either for or against it, should remain "pending" forever, and thereby block the introduction of any other amendment. But they provided that "while an amendment or amendments, which shall have been agreed to by one General Assembly shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed."

The so-called "lawyer's amendment" was introduced in the legisla-

ture in 1897, and under the decisions of the Supreme Court has been "pending" ever since. It was voted on in 1900, 1906 and in 1910, but without result. It still "pends," preventing the submission of any other special amendment. For thirteen years the people have been shut out of their inalienable right of amendment. The Constitution of 1816 provided for a popular vote for a convention every twelve years.

Meanwhile numerous proposals for amendments have come up, and are "overdue." Most of the changes proposed have been urged and discussed for years. The demand has been so pronounced that I called attention to it as one of the historic movements of the time in my history of Indiana, edition of 1904. (Indiana, in American Commonwealth Series, p. 468.)

This is the situation that has developed from what the constitution makers of 1851 intended as a simple and easy mode of amendment. The idea that a sovereign people, with the indefeasible and inalienable right to alter their constitution at will, should have their hands tied, and their right defeated and alienated, because of lack of interest in some question submitted to them is so grotesque in its absurdity that its mere statement is ample proof of its impossibility. If the constitution makers of 1851 had produced such a situation, and could realize it, they would certainly be convinced that "reason had not died with them."

But that situation does not exist; and the people of Indiana, in this emergency, are indebted to Governor Marshall for calling attention to the great fountain of reserve power in the people themselves, by which they can at any time make such alteration in their form of government as they believe essential to their welfare. There is nothing irregular or revolutionary in this. It involves only coming out of a rut, and moving ahead on the broad and unobstructed road which is provided for them by the Constitution itself. The people themselves have only to say whether they desire to remove the evils which experience has shown to exist in their present Constitution. This is the sort of solution for such a problem that Oliver P. Morton would have made, and it is in such recurrence to the fundamental principles of our government, when new problems arise, that the truest statesmanship is to be found.

III.

The Legislative Authority.

The situation presented in Indiana is one where a power of special amendment is provided by the Constitution, and the mode of exercising it is prescribed; while a general power of adopting a new constitution is also preserved, but with no mode prescribed. Under these conditions the provision of the mode is necessarily a matter of legislative discretion, because it is a legislative act, and the

Constitution vests "the legislative authority of the State" in the General Assembly. The rule is thus stated by Judge Cooley:

"The will of the people to this end can only be expressed in the legitimate modes by which such a body politic can act, and which must either be prescribed by the constitution whose revision or amendment is sought or by an act of the legislative department of the State, which alone would be authorized to speak for the people upon this subject, and to point out a mode for the expression of their will, in the absence of any provision for amendment or revision contained in the constitution itself." (Constitutional Limitations, p. 42; Jameson, Constitutional Conventions, sec. 375.)

This is necessarily true, because neither the executive nor the judiciary could prescribe the mode, and there is no way for the people to act except through their representatives. It is true that there have been cases when the movement was initiated by volunteer bodies, but this was in the absence of a valid, or effective legislative body. Of the thirteen original States, Pennsylvania was the only one in which the initiative of the constitution was not by the legislative body, but that case was one of practical necessity. The same course was followed by Vermont, which had no legislature, in 1777, and has been followed by some other States since, but it is a generally conceded legal proposition that if there is a valid legislative department in existence, an independent movement is not to be considered legitimate.

This question, however, has been the cause of serious disturbance in the United States, and of great agitation. It was the central question in the Kansas troubles over the Topeka and Lecompton constitutions, and also in "the Dorr rebellion" in Rhode Island. In the latter case a body of citizens, probably a majority, wearied by the refusal of the charter government to allow a more democratic form of government, undertook to establish a new constitution and a government under it. The movement was suppressed, and the case finally came to the Supreme Court of the United States, which sustained the charter government as the valid existing legislative body. (7 Howard, United States, p. 1.) In none of these cases has anybody questioned the validity of initiation of a revision by the legislature—the question was the validity of the initiative by independent bodies of citizens.

The common mode of legislative procedure is to call a constitutional convention, or to submit to a vote of the people the question of calling a constitutional convention. A convention so called is simply an agency for preparing a form of constitution for submission to the people. It is governed by the law which calls it not only as to its membership and mode of election, but as to the scope of its work. The legislature may limit the convention to a change of only a part of the constitution if it so desires. (Jameson, Constitutional Conventions, sec. 379.) In the absence of constitutional restriction the matter is one of legislative discretion; and this extends beyond

the calling of a convention to any other mode of submitting a constitution to the people that is within "the legislative authority of the State.'

This term was borrowed from English law, and means the legislative power exercised by the British Parliament, subject, of course, in this country, to the restrictions of constitutions. (Cooley, Constitutional Limitations, pp. 104-5.) In the United States, at the time of the Declaration of Independence, the colonial legislative bodies had been supplanted by independent, or revolutionary legislative bodies in all the Colonies but Rhode Island and Connecticut. These bodies were known chiefly as "assemblies," "congresses," or "conventions," and were ordinary legislative bodies, as distinguished from the "constitutional conventions" of later date. When, therefore, on May 15, 1776, the Continental Congress "recommended to the several assemblies and conventions of the United Colonies where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents," its appeal was to the ordinary legislative bodies, which were recognized as having the same power of making fundamental law, or constitutions, as the British Parliament. (Jameson, Constitutional Conventions, secs. 128-9.)

The action taken was on the same basis. The first Colony to move was New Hampshire, whose legislative body was known as "the Provincial Convention." On November 3, 1775, the Continental Congress had agreed to call for the formation of independent colonial governments, and, without waiting for the formal call, the Provincial Convention of New Hampshire called for the election of a new convention "empowered by their constituents to assume government"—the Colony had not yet abandoned allegiance to King George. The election was held, and "as soon as the new convention came together, they drew up a temporary form of government; and agreeably to the trust reposed in them by their constituents, having assumed the name and authority of a House of Representatives, they proceeded to choose twelve persons to be a distinct branch of the legislature, by the name of a Council." (Belknap's Hist. of New Hampshire, vol. 2, p. 305.) In other words, the colonial legislature adopted the first constitution of New Hampshire, and then organized as the first legislature under the constitution they had made, continuing in office for one year.

This was the mode of adoption of the first American constitution, and the institution of independent government under it. It followed the precedent of the "Convention Parliament" of Great Britain, which was assembled by King William in 1689, in its "assumption of government;" but in its adoption of the constitution the colonial legislature exercised only the legislative powers of a British parliament, which were what was meant by "the legislative authority of the State," at that time. For the subsequent modification of that power

by constitutional restraint, it will be necessary to look briefly at some of the precedents in the history of the American States.

The three original States next following New Hampshire in the adoption of constitutions used the same method, i. e., the constitutions were formulated and adopted by the ordinary legislative bodies without submission to the people; and these legislative bodies assumed the legislative powers under the constitutions, and proceeded with their exercise. These three States were South Carolina, Virginia and New Jersey, and these, with New Hampshire, were the only States that adopted constitutions prior to July, 1776. Exactly the same course was followed by Georgia in October, 1776.

These were illustrations of "the legislative authority of the State" without constitutional restriction. Its exercise was considered by the Supreme Court of South Carolina in 1823, and the court made the clearest and most exact statement of the character of the legislatures of the revolutionary period that was ever written. It is as follows:

"Between the declaration of our national independence and the adoption of the Federal Constitution this State was sovereign and uncontrolled. The people, in whom all power was vested, thought proper to employ the legislature as their agent in the exercise of that power.

"In the use of this power the legislature was not restricted. The legislators were the representatives of the people for all purposes: whatever could be done by the people could be done by the legislature. Each succeeding legislature possessed the same power and could not be bound by any act of a preceding legislature, for each legislature was the people. Whatever, therefore, one legislature could enact, a succeeding legislature could repeal. The form of government adopted by the legislature of 1776 was no more than any other legislative act, and was subject to the revision and repeal of a succeeding legislature. The legislature of 1778 did revise and repeal the act of 1776, and adopted another form of government, which is called 'the Constitution of 1778.' This constitution pretends to no control over succeeding legislatures, although it does restrain the officers of the government in the exercise of the powers vested in them for the administration of the laws. Had it attempted to restrain future legislatures it would have been inoperative, as each legislature possessed all the power of the people. The people, or their representatives, the legislature, when unlimited by the people, may do whatever is (not) physically impossible, although they ought not, as moral agents, to do what is morally wrong." (3 McCord, p. 354.)

This last sentence, so far as the law-making power is concerned, states exactly "the legislative authority of the State," which is vested in the State legislatures of today, and which has been fully recognized by the Supreme Court of Indiana in an unbroken line of judicial decisions running from 6 Blackford, p. 299, to 163 Ind., p. 512. As put by Judge Dewey and indorsed by Judge Elliott: "The

legislative authority of this State is the right to exercise supreme and sovereign power, subject to no restrictions except those imposed by our own Constitution, by the Federal Constitution, and by the laws and treaties made under it." (101 Ind., p. 564, at p. 567.)

IV.

The Legislative Discretion.

The right to exercise sovereign legislative power necessarily involves full legislative discretion in the exercise of that power. The power would not be "sovereign" if this were not true. The use of this discretion was well illustrated in the action of the thirteen original States, all of which stood on the same basis of unlimited sovereignty after declaring their independence. In five of them, as we have seen, viz., New Hampshire, South Carolina, Virginia, New Jersey and Georgia, the legislatures exercised the full sovereign legislative power by adopting constitutions without submitting them to a vote of the people for ratification, and by organizing the new government under these constitutions. They retained and exercised the legislative powers themselves, and elected the necessary executive and judicial officers.

In the remaining States, four distinct courses were followed by the legislatures. In August, 1776, the legislature of Maryland called for the election of a new legislature or "convention" for the special purpose of adopting a constitution, in addition to usual legislative work. The "convention" so elected continued as a legislature after adopting the constitution, which was not submitted to the people for ratification. The same course was followed by New York in 1777; and with these two may be classed Pennsylvania and North Carolina, where the action was the same, except that the legislative body which adopted the constitution was called in Pennsylvania by a volunteer committee of citizens, and in North Carolina by the Committee of Safety. In these four the constitutions were not submitted to the people, and the bodies that formed them continued as ordinary legislatures.

In Rhode Island and Connecticut the power exercised by the legislatures was in principle the same as in the first five States above, but differed in the fact that the legislatures of these two adopted their existing colonial charters as constitutions, merely transferring their allegiance from the King of Great Britain. The same legislatures continued under the new governments, and the matter was not submitted to the people for ratification in any way.

In July, 1776, the legislature of Delaware called for the election of "deputies, to meet in convention, there to organize and declare the future form of government for this State." This convention met in August, and the constitution adopted by it was proclaimed on September 21, without submission to the people. It was the first body chosen for the special purpose of forming a constitution, and the only one of the original thirteen that did not exercise ordinary legis-

lative powers; except that it called an election on October 21 for selecting the officials provided for in the Constitution.

The last of the thirteen Colonies to adopt a constitution was Massachusetts. In that State the legislature first had a vote taken on the question of calling a special convention to form a constitution, and called it in compliance with the vote. The convention so called framed a constitution and submitted it to a vote of the people, with provision that a three-fifths vote should be necessary for ratification. This was the only one of the thirteen original States in which the first constitution was submitted to the people for adoption.

Since the adoption of the Federal Constitution "the legislative authority" of each State has been limited to the extent of the authority vested in the United States, but "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." In addition to this there have been various restrictions on "the legislative authority of the State" that is vested in State legislatures, by the constitutions of the several States, the most important and universal being the restriction of the legislature to legislative powers as distinguished from executive and judicial powers.

In regard to fundamental legislation, or the adoption of constitutions, there is generally conceded to be a limitation of final power by the common declaration that "the people have, at all times, an indefeasible right to alter and reform their government." It is true that there have been a number of State constitutions adopted without submission to the people, but this has been done only by constitutional conventions, and when done is justified on the theory that the people have delegated their final power of adoption by electing a convention especially for that purpose. Nobody claims that a State legislature would have power to adopt a constitution without submitting it to a vote of the people.

On the other hand, the power of initiation of fundamental legislation is even more firmly established in the legislature than it was in colonial times, for in the original States all of the legislatures that adopted constitutions were in the first instance created by independent action of the people, and in Pennsylvania the body that adopted the first constitution was called directly by an independent, volunteer committee of citizens. But since the formation of our National Government no such independent action has been recognized as valid if there was in existence at the time a valid legislature. Furthermore, in all cases when constitutions have provided for either special amendment or general revision, the initiative step, whatever it might be, has been given to the legislature.

The constitutions adopted in this later period have been of two classes: (1) those adopted by existing States, in place of former constitutions; (2) those adopted by new States for admission to the Union. In both these classes the usual mode of procedure has been by constitutional convention, for three reasons: (1) Where constitu-

tions have provided the mode of general revision they have adopted the convention system; (2) Where new States have been formed under enabling acts those acts have usually provided for conventions; (3) Where no mode of general revision has been provided by the constitution, legislatures have usually provided for constitutional conventions, because they had as much as they could well attend to in ordinary legislation. Hence the cases of general revision by legislatures in the later period are few in number, and in the nature of emergency action; but they are none the less examples of "legislative authority" and "legislative discretion."

Of the exercise of legislative discretion by existing States in the general revision of their constitutions, the most notable illustrations are under what is known as "the commission system." This orginated in New York in 1872, when the legislature, without any express authority, and without any precedent, passed an act for the appointment of a commission of thirty-two members, four from each judicial district, "for the purpose of proposing to the legislature at its next session, amendments to the Constitution." The amendments so proposed were so extensive that they amounted to a revision of the Constitution, some fourteen weeks being occupied in their preparation. With some changes by the legislature they were submitted to the people as "amendments," although the existing Constitution provided for conventions to "revise the Constitution and amend the same."

A similar course was followed by New Jersey in 1875, except that the commission was composed of three persons appointed by the Governor, the President of the Senate and two persons appointed by him, and the Speaker of the House and two persons appointed by him. The changes proposed by this commission were also submitted to the people, by the legislature, as "amendments."

The Michigan legislature of 1873 provided for a commission of eighteen members appointed by the Governor, not more than two from any one congressional district, who were to report to the next session of the legislature, general or special, "such amendments and revision of the Constitution" as they deemed advisable. They recommended a revised constitution to the special session of the legislature in 1874, which amended it and submitted the amended constitution to the people as a whole, just as the Indiana legislature has done. (Michigan Session Laws, 1874, p. 11; Senate Journal, p. 215.)

In Maine there was a novel action that will illustrate the scope of "legislative discretion" in the initiation of constitutional reform. The proposals of the commission were submitted as amendments, but with the provision that after the election "the Chief Justice of the Supreme Judicial Court shall arrange the constitution as amended, under appropriate titles, and in proper artcles, parts and sections, omitting all sections, clauses and words not in force, and making no other changes in the provisions or language thereof. and shall submit the same to the legislature at its next session."

If approved by the legislature this revision was to be formally enrolled and "the constitution with the amendments made thereto, in accordance with the provisions thereof, shall be the supreme law of the State."

This provision was carried out, and the revised constitution so adopted became the Constitution of the State, although the preceding Constitution contained no provision for change in that manner.

In the adoption of constitutions for new States the general rule has been for conventions to be called under "enabling acts" passed by congress, but a number of new States adopted constitutions without waiting for that authorization. Among these were Tennessee, in 1796; Michigan, in 1835 and 1836; Arkansas, in 1836; Florida, in 1839; Iowa, in 1844; Wisconsin, in 1847; California, in 1849; Kansas, in 1855; Oregon, in 1857; Nevada, in 1864; Nebraska, in 1866, and Colorado, in 1876.

In most of these the constitutions were prepared by conventions called by the territorial legislatures. In California the convention was called by the Governor; and the first Constitution of Nebraska was prepared by the territorial legislature and submitted to the people for ratification.

The Nebraska case presents the most extreme test of "legislative authority" that has ever occurred, and, indeed, as extreme a test as could be imagined. As a general proposition the authority of a territorial legislature is less than that of a State legislature; and in addition to this there were charges of fraud and illegal voting in the election, which was declared to have resulted in a majority of only 100 for the Constitution. The historical facts in the case are stated by the Supreme Court of Nebraska as follows:

"In April, 1864, Congress passed an enabling act providing for the election, in June of that year of delegates who should meet in convention in July following, for the purpose of framing a constitution, with a view to the admission of Nebraska as a State into the Union. The sentiment of the people at that time being opposed, evidently, to becoming a State, the delegates chosen in the manner provided, upon meeting, refused to make a constitution and adjourned sine die.

"Without any further act of Congress, the territorial legislature of 1866, submitted a proposed constitution to the electors, to be voted on in June of that year, with directions to choose, at the same time, legislative, executive and judicial officers for the proposed State. The Governor, Secretary of State, and Auditor of the Territory were, by the act submitting the instrument, constituted a board of canvassers; and they declared the Constitution adopted by a majority of a hundred."

The legislature, so elected, met and elected two United States Senators, who took the Constitution to Washington; and Congress admitted the State, after prolonged debate, with provision only that the word "white," as a qualification for electors, should be removed by the Nebraska legislature. The Nebraska legislature accepted this

change, without any submission to the people, and the constitution so adopted remained in force until replaced by a new one in 1875.

The facts in the case were quite fully before Congress, and the debate there was not as to the validity of the Constitution, but as to whether Congress, with the consent of the Nebraska legislature, could amend a constitution that had been adopted by the people, by striking out the word "white." Congress was at the time engrossed in "reconstruction" legislation, and it was considered fatally inconsistent to admit Nebraska with an exclusion of negro voters while refusing to allow their exclusion in the reconstructed southern States. (Congressional Globe, July, 1866, pp. 4206, 4213, 4219-22, 4275; January, 1867, pp. 448-56, 472-80.)

The action of the legislature in preparing and submitting the constitution, instead of being treated as invalid, was treated as a guarantee against the charges of irregularity in the election. Senator Jacob M. Howard, of Michigan, former Attorney-General of that State, said: "The whole proceeding for the formation of the State Constitution took place under and by the authority of the territorial legislature; they prescribed the rules of the proceeding; they submitted the instrument which was the work of their own hands, and a very wise and excellent one I believe, to the consideration of the people, and the people adopted it as their form of government by a respectable majority. I am not able exactly to deny the power of a territorial legislature to pass an enabling act for the purpose of taking the sense of the people of the territory upon the question of forming a State government. I have too high a precedent before me to dispute the validity of such legislation. The people of my State, while a Territory, through their legislature, passed a similar enabling act, an in 1835 called a convention which framed a constitution of government, which was afterward adopted by a vote of the people. I never heard it alleged that this territorial statute was invalid." (Congressional Globe, July, 1866, p. 4210.)

The bill for the admission of Nebraska was vetoed by President Johnson, on the sole ground that Congress had no power to require a change in a constitution that had been adopted by the people, and the bill was passed over his veto. (Congressional Globe, February 9, 1867, p. 1121.) The Constitution itself came before the Supreme Court of Nebraska on the same question—a case involving the validity of a jury of which a negro was a member—and in that case the Constitution was assailed at every point. The Supreme Court sustained the Constitution, including the amendment made by Congress and the legislature. In this decision the court gave the broadest construction to every point offered against the Constitution, and held that it was valid nevertheless.

Particularly notable is the following statement as to the origin of the Constitution: "As is well known, the Constitution was originally drafted in a lawyer's office by a few self-appointed individuals. These importuned the legislature then sitting to submit it to a vote of the

people. At the start, then, we must reject the instrument, or admit that any one may draft the organic law of a proposed State who chooses to volunteer. * * * To say that the people of a Territory must frame—that is, write out—their constitution in the first instance themselves, is not correct. The document might be imported from Japan, or fall from the clouds; and if by any subsequent action it becomes the constitution of the State, we are bound by it, and cannot question where it came from." (Brittle vs. The People, 2 Nebr., p. 198.)

This case more than covers the present question in Indiana, but before leaving this branch of the subject I would call attention to a singular, and generally overlooked, provision of the enabling act under which the first Constitution of Indiana was formed. In our territorial period the House of Representatives was the only part of the legislature elected by the people; and it nominated ten persons to Congress, which elected five of these to serve as a "Council," or upper house of the legislature.

The enabling act provides that the citizens of the Territory having "the legal qualifications to vote for Representatives in the General Assembly of the said Territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said Territory according to the apportionment made by the legislature thereof at its last session. * * * And the election for the representatives aforesaid * * * shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said Territory regulating elections therein for members of the House of Representatives."

This body, elected in every respect as a House of Representatives, is authorized by the act to meet, and to "first determine, by a majority of the whole number elected, whether it be or not expedient at that time to form a constitution and State government for the people within the said Territory; and if it be determined to be expedient the convention shall be, and hereby are authorized to form a constitution and State government; or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place as shall be prescribed by the said ordinance; and shall then form for the people of said Territory a constitution and State government."

This provision giving to a body elected as an ordinary legislature, the power either to adopt a constitution or to call a constitutional convention was also used in the enabling acts of Ohio, Illinois and Missouri. In all the other enabling acts provision is made for the direct election of a constitutional convention, excepting that of Wisconsin. In that case the provision was simply that the people might

adopt a constitution, and the mode of procedure was left to be fixed by the territorial legislature.

V.

The Legal Objections to the Proposal.

The legal objections thus far offered to the submission of the proposed constitution to the people are the two offered by Hon. A. C. Harris, of the Republican lawyers' committee, at the Senate hearing. Mention has been made of the first of these—that the legislature had general power, not expressed in the Constitution, to call a constitutional convention, but not to submit a proposed constitution to the people. This is merely a question of the mode of procedure within "the legislative authority of the State"; and, as has been shown, the legislature is not limited to one mode, but may use, in its discretion, any known legislative mode, there being no constitutional restriction on this subject.

His second objection was more plausible, but only so because it rests on a confusion of the ordinary and the legal meaning of terms. Calling attention to the mode of amendment provided by the Constitution, and the necessity of following it in amendment, he urged that the proposed changes in the Constitution were only "amendments," and that the proposed constitution was not a new constitution, but an "amended constitution." When asked whether, if a constitutional convention were called, and it adopted the proposed constitution, word for word, it would be a "new constitution" or an "amended constitution," he replied that it would be an amended constitution.

The question was then asked by a member of the Senate committee: "Suppose two parties make a written contract, and, desiring to change it in some particular, they rewrite it, including the change. Would that be a new contract or an amended contract?" Mr. Harris replied that it would be an amended contract. This position was controverted by Hon. Dan Simms, who said it would be a new contract; and illustrated his position by a change in a will. He urged that if a man had made a will, and, desiring some change in it, had it rewritten, it would be a new will; but if the change were added as a codicil it would be an amended will.

Any lawyer will recognize the fact that in this discussion Mr. Harris was using words in their ordinary sense, while Mr. Simms used them in their legal sense. In common usage the distinction between amendment and revision is one of extent. Revision is extensive amendment, and it would be impossible to fix a line where one begins and the other ends.

On that basis the proposed constitution is certainly a revision from the standpoint of the diversity of its effects. It affects every branch of the Government. Even the bill of rights is changed—an unusual thing—by the provision for a workman's compensation law, and that only in case of necessity shall private property be taken by the public,

even with just compensation. It changes the qualifications of electors. It changes the powers of the executive. It changes the terms of State and local administrative officers and provides that their salaries shall not be increased during their terms. It changes the constitution and powers of the legislative department. It changes the constitution of the Supreme Court, and makes possible the abolishment of the Appellate Court. It changes the mode of constitutional amendment. If this be not revision, what is revision?

On that basis this is a new constitution or there has never been such a thing as a "new constitution" in the United States since the first one was adopted. They are all on the same model. Judge Cooley says, "Certain things are to be looked for in all these instruments"; and he enumerates, (1) the general framework of government; (2) the qualifications for suffrage; (3) the "check and balance" system of division of powers into legislative, executive and judicial; (4) the recognition of local self-government; (5) the bill of rights. (Constitutional Limitations, p. 46.) These are found in all American constitutions. Nine-tenths of the provisions of the proposed constitution are the same as those of the Constitution of 1816, and those of our neighboring States. We retain even the provisions that soldiers shall not be quartered in private houses, and that no titles of nobility shall be granted, although there is not much more need for them than for a provision that witches shall not be burned at the stake.

On the other hand, from the standpoint of the number of sections affected it would not be improper to call it an amended constitution, for of the 189 sections of the present Constitution only 23 are changed in any respect, and the remaining 166 are left exactly as they now stand. The exact wording is retained because the present Constitution has received very thorough judicial construction in the sixty years that it has been in force, and it is desirable to leave the law in its settled condition so far as it is satisfactory. It may be noted also that the re-enactment increases its stability. Some constitutional questions have been decided in only one case, and some by a divided court. The Supreme Court is at liberty to change its construction. But it is a well established judicial rule that when a statute, or a constitutional provision, that has been judicially construed, is re-enacted, it carries the judicial construction with it. (155 Ind., p. 484.)

It is unquestionable that exactly the same changes could be made in the Constitution by 23 amendments, if the mode of special amendment could be used. In ordinary language, therefore, this might be called an amended constitution, or an amendatory re-enactment of the Constitution. But in legal questions words must be used in their legal sense (Burns Rev. Stats., sec. 240) and these words have fixed legal meanings. The distinction in law between amendment and revision, or new enactment, is one of form and not of extent. Sutherland explains revision thus:

"Revision of statutes implies a re-examination of them. The word

is applied to a restatement of the law in a corrected or improved form. The restatement may be with or without material change. A revision is intended to take the place of the law as previously formulated. By adopting it the legislature says the same thing in effect as when a particular section is amended by the words "so as to read as follows." The revision is a substitute; it displaces and repeals the former law as it stood relating to the subjects within its purview. Whatever of the old law is restated in the revision is continued in operation as it may operate in the connection in which it is re-enacted." (Statutory Construction, sec. 154.)

But for this legal distinction, the Constitution would be violated at every legislative session, for the Constitution of Indiana, like most American constitutions, provides that, "No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length." Yet acts are constantly amended, without either reference to title or setting out the act as amended, through the effect of new laws which provide for the repeal of all laws "or parts of laws" in conflict with them. The universal rule of law on this subject is that "An act of the legislature, not amendatory in character, but original in form and complete in itself, exhibiting on its face what the law is to be—its purpose and scope—is valid, notwithstanding it may in effect change or modify some other law upon the same subject." (24 Oregon, p. 558.)

In its amendatory effect, the proposed constitution is of exactly the same character as the park law of 1909, the towns and cities law of 1905, the tax law of 1891, the election law of 1889, and hundreds of other laws, which amend former laws by repealing parts of them, but do not set out the laws so amended. It is "new enactment" just as they are, although in fact they are almost wholly re-enactment of former laws, with amendment in some particulars. To question the regularity of their adoption would be to dispute the legality of half the statute law of the State.

VI.

Sentimental Objections to the Proposal.

As is natural, the objections thus far offered to the proposed constitution have come from Republican sources; and this is entirely proper, for the welfare of the country is insured by one party watching the acts of the other. But it should also be remembered, as a matter of fairness, that one political party is very liable to make criticisms of the acts of the opposition that are not founded in fact or reason; and therefore that in weighing such criticism all unfounded effort to make political capital should be excluded, and a fair basis for the criticism be called for.

A common form of objection has been that voiced by ex-Governor J. Frank Hanly, in these words: "I do not doubt that the General

Assembly has the legal power to make and submit a constitution, but that it should do so is ill advised and audacious." But why? The legislators are the representatives of the people, and what is there "ill advised" or "audacious" in their exercising a legal power for the purpose of relieving the people of an intolerable situation. It is true that the exercise of the power is unusual, but the situation is unusual. Manifestly Governor Hanly does not agree, in his estimate of the province of a legislature, with Jameson, who says:

"In any crisis calling for legal authority to act, and where no constitutional provision, either permissive or restrictive, exists, if the legislature take upon itself, within the limits of a wise expediency, the power to act, to give the requisite authority and direction, there is no department of the Government that can question its right to do so; and not only that, but a failure to act would stamp it as false to its duty. Having all legislative power within the limits indicated, the making of such provisions of law as are needed to save the State from inconvenience, loss, or danger, defines precisely the legitimate exercise of that power. To do it is its imperative duty. For that it is constitutionally competent, and all departments of the Government, all agents and representatives of the sovereign, charged with collateral functions, are bound, within the scope of that power, to obey its behests, as the authentic expression of the will of that sovereign." (Constitutional Conventions, sec. 375.)

Another much-reiterated objection is that it is "a one-man constitution." Taking it in that view, is this not merely an appeal to childish prejudice? Every idea must originate somewhere, and reasoning men know it. The members of the first Massachusetts convention did not reject the constitution which was brought in, all written out, by John Adams. They made a few amendments, and adopted it. The members of the first Virginia convention did not reject the constitution prepared and offered by George Mason. They adopted it, and the State retained it for over half a century. Who ever objected to the Emancipation Proclamation on the ground that it was written by Abraham Lincoln? And yet that document made a greater political and social change in the United States than was ever made by any constitution. Nobody ever objected to the Declaration of Independence because it was written by Thomas Jefferson. Nobody objects to our excellent State Board of Charities law because it was prepared and brought to the legislature by the Rev. Oscar McCulloch. No rational man objects to such things any more than he would think of objecting to the telegraph because it was a "one-man invention" of Morse.

Another objection that has been worked overtime is that the proposed constitution was "approved by a caucus," and was "adopted in one night." There is a legitimate force to this objection, but the objection is not altogether accurate. The exact facts are that the proposed constitution was submitted to a Democratic caucus, composed of a majority of the members of both houses of the legisla-

ture. After being considered by them, and after being published and subjected to public criticism for a week, it was amended by a second caucus to meet every reasonable objection made to any part of it, and was then introduced as amended, in its present form, and passed by a party vote.

The legitimate force of the objection is that as caucuses are commonly used for partisan advantage, and sometimes for bad purposes, this should fairly raise a suspicion that such was the case here, and the Democrats should be put to prove that the public welfare was sought. I further concede that one partisan advantage is sought. The Democratic party admits that honest and intelligent suffrage is to its advantage; and it has maintained that position in Indiana ever since 1889, when it adopted the Australian ballot law and the most stringent law ever adopted to prevent vote buying. Its justification for seeking this advantage is that it likewise advances good government and promotes the general welfare.

Moreover, the Democratic party in its platforms has repeatedly charged that the Republican party has conceded this claim by amending and weakening those laws. It is evident that their opposition to a speedy and inexpensive mode of securing intelligent and honest suffrage now is based on the knowledge that it will injure that party politically. The caucus method was adopted as a political necessity because everybody knew that the Republicans would oppose any reform in this line at every step. That is common, every-day politics. The Republicans made exactly that sort of opposition to the adoption of the Australian ballot law, and the new tax law; and their papers and speakers made every effort to prejudice the people against those laws; but everybody concedes now that they are wholesome and proper measures. Nevertheless they could not have been passed except as party measures. The only fair and reasonable way of judging a measure that is adopted as a party measure is by the merits of the measure itself. That test the Democratic party welcomes as to the proposed constitution.

Of all the cheap politics attempted by Republicans, in this connection, the cheapest appears in the following editorial paragraph of the Indianapolis Star of March 23:

"Governor Marshall would bar out the alien voter so that the electorate may be of the pure native quality shown in Adams County, Ohio."

Note the adroit juggle by which "alien" is put in contrast with "pure native," on the supposition that citizens of foreign birth or foreign descent will be included by the reader with "alien." Note the false implication in the reference to the reliably Republican and hopelessly corrupt county of Adams, Ohio, whose people, it is said, are to a very unusual degree of New England descent. The obvious inference from the paragraph is that the average native American is more corrupt than the average foreigner, but even the Star does not dare to say this directly. No intelligent American believes that

the native American is excessively honest, but equally none believes that he is worse than the average foreigner. Note the bold hypocrisy of such a plea from a paper that said editorially of the proposed constitution on February 15: "Unqualified approval should be given to the limitations upon suffrage."

Such transparent humbug merely illustrates the low estimate of the intelligence of our foreign-born citizens that is commonly shown by Republican writers and speakers, and that always has been shown by them since the old "Knownothing" party went bodily into the Republican ranks after its overthrow by the Democratic party. There is probably not one foreign-born American in a hundred who believes that an alien—an unnaturalized foreigner—ought to be allowed to vote. Why should he? He has shown his appreciation of American citizenship by naturalizing; and why should he want another put on an equality with him who would not even go to that slight trouble to gain full citizenship, in a country that has the most liberal immigration and naturalization laws in the world?

Everybody of ordinary intelligence knows that the question of civil rights of aliens, is not one of honesty, but of presumed allegiance. Indiana is one of the few States that allows them to vote, but it has always limited their civil rights for the evident reason that a mere sojourner has none of the interests or responsibilities of a citizen. Our land law, as revised by the Republican legislature of 1905, does not allow an alien to hold over 320 acres of land, no matter how acquired, for more than five years; and if he attempts to do so the excess escheats to the State. The meanest criminal on trial in our courts has the right to demand that no alien shall serve on the jury that tries him; and if a single alien were on the grand jury that indicted him the indictment is invalid. No alien can be a representative in Congress or a member of the State legislature; but yet we stupidly allow them a voice in choosing these officials.

Another quibbling objection is that the Constitution is so "sacred" that it must not be changed. This was carried to such a length that, in the debate on the bill, it was declared that a member who voted to submit the proposed change to the people "violated the Constitution he had sworn to support." This is of the same character as the objection made by the pharisees when the disciples "plucked ears of corn" and ate them on the Sabbath; and which was met by the instructive rebuke that "the Sabbath was made for man, and not man for the Sabbath"; i. e. it was for man's benefit as a day of rest, and not for his injury by forcing him to go hungry, or endure other hardship. The Constitution was made for the people, and not the people for the Constitution. It is to be sacredly observed as the will of the people, but itself provides that, whenever the people think it does not promote their welfare or happiness, they have the inalienable right to change it in any way they see fit. Instead of violating the Constitution, the representatives of the people who voted to

submit the proposed constitution to the people, voted to give effect to this provision; and if anybody violated the Constitution it was those who tried to debar the people from their right.

VII.

Elevation of the Suffrage.

The changes at present proposed in the Constitution are greater than those made in the Constitution of 1816 by the Constitution of 1851; and yet they are not greater in proportion than the changed conditions of the State in the two periods.

By the special census of 1815 the population of Indiana was 63,897, and the Indian title to two-thirds of the State had not been extinguished. In 1850 the population had increased to 988,416, but it was still almost wholly agricultural. The total investment in "manufacturing plants" in 1850 was only $7,750,402, as against over $250,000,000 now; and this was chiefly in the individual shops of carpenters, blacksmiths, shoemakers and other tradesmen, with the sawmills and flour-mills of the State.

In 1850 there were only 212 miles of railroad in Indiana, and 124 miles of that length had been completed in the preceding year. In 1816 the total State tax levied was $6,043.36; in 1850 it had grown to $450,481.76; at present it exceeds $6,250,000.

In 1816 there was not a town of two thousand inhabitants in Indiana. In 1850 there were only nine that had more than two thousand people. The largest of these was New Albany, with 7,786; and it was closely followed by Madison, with 7,714, and Indianapolis, with 7,686. Then came Lafayette, with 5,997; Evansville and its suburb, Lamasco, with 4,587; Ft. Wayne, with 4,201; Terre Haute, with 3,824; Lawrenceburg, with 2,604, and Logansport, with 2,194.

Of the changes made, and proposed, in the Constitution, none are more closely connected with these conditions than those affecting suffrage. The Constitution of 1816 restricted suffrage to white men, twenty-one years old, who were citizens of the United States, and who had resided in the State for one year. The Constitution of 1851 reduced the residence requirement to six months, and extended suffrage to foreigners who had lived in the United States one year, and had officially declared their intention to become citizens, or "had taken out their first papers," as it is commonly expressed.

The avowed purpose of these changes was the encouragement of immigration to the State. There were a few who protested against this—who pointed out the wrong of giving to people who were not citizens of the United States the suffrage rights of citizens of the United States—for they all vote in national elections as well as in State elections; but local interests prevailed. The State had piled up over $15,000,000 of debt by its internal improvement ventures. Its chief visible assets were its unsold "canal lands," and Congress had added a million acres of "swamp lands" by the act of September 28,

1850. Of the 23,000,000 acres of land in the State, only 12,585,678 acres were reported "in farms" in 1850, and of these less than 5,000,000 acres were improved. The State needed population, and the people were determined to have it. Easy and speedy access to full citizenship was believed a strong inducement to immigration, and it was provided.

There was another reason for this in 1851. The American people have always given warm welcome to foreign exiles who were victims of religious or political persecution, and have usually found them most desirable citizens. The republican revolutionary movements of Europe in the forties had awakened their warmest sympathy—a sympathy which was manifested a few years later, in the enthusiastic receptions to Kossuth. In particular, the German revolution of 1848 had sent to this country a large body of exiles who were men of intelligence and thoroughly imbued with the spirit of progress—so much so that they were, in ridicule, called "weltverbesserers," or world-reformers, by their opponents.

But while welcoming this immigration, the existing sentiment of the time was equally shown by a rigid prohibition of negro immigration. The thirteenth article of the Constitution not only prohibited any negro or mulatto from coming into the State, but also made it a penal offense to "employ such negro or otherwise encourage him to remain in the State."

It also made any contract with any such negro immigrant void, and this was enforced to the extent of making void the marriage contract of a negro with a negro woman who came into the State after the adoption of the Constitution (7 Ind. 389). This article of the Constitution became a dead letter during the civil war; and was removed altogether in 1881 by the amendment which substituted for it the restriction of municipal debt to 2 per cent. of the assessed value of taxable property.

In the experience of Indiana since 1851, there has been a vigorous growth of sentiment, especially in the last twenty-five years, that we have made suffrage too cheap. We have made it so cheap that men do not value it as they should. Thousands regard it as an asset rather than as a privilege, and stand ready to barter it for a mess of pottage. They are worse than Esau, for he sold his birthright when pressed by hunger; and the appalling revelations in Adams County, Ohio, and at other points, has shown the terrible menace to popular government in this condition.

Every sane man knows that popular government without an intelligent and honest suffrage is a ghastly farce. If the voters be ignorant, it is the government of those best able to delude them. If the voters be corrupt, it is the government of those who have the money to buy them. If the voters feel no interest in their government, they easily fall into one or both of these classes. The evils of admission to the suffrage of foreigners who come here with no intention of making this country their home, but only to accumulate enough

money to attain ease on return to their native lands, was first impressed on Americans by the large body of Chinese immigrants. In recent years the impression has been strengthened by thousands of Europeans who have come here with a like purpose, and who have absolutely no interest in the welfare of the country beyond their own present advancement. If a man be here solely to accumulate a little money, why should he not sell for money a vote that is almost thrust on him? Manifestly, if we are to have good government, the suffrage must be restricted in the first place to those who can reasonably be supposed to feel some interest in good government.

There is another restriction that should be imposed unless we disregard utterly the very corner-stone of our governmental system. It was declared in the "forever unalterable compacts" of the ordinance of 1787 that "morality and knowledge are necessary to good government." We declared in our Constitution of 1816 that "knowledge and learning, generally diffused throughout a community, are essential to the preservation of a free government"; and we repeated the declaration in the Constitution of 1851. It is on this principle that our free school system is based, for great as is the benefit to the individual educated, the justification of taxation for education is the benefit to the community of enlightened suffrage.

The people of Indiana are paying more than $8,000,000 a year to maintain free schools. We have a compulsory education law requiring the attendance at school of children between the ages of seven and fourteen years. We have truant officers to enforce their attendance, and penalties for failure to attend. We have provided that if children lack proper books or clothing these shall be furnished at public expense.

And yet we say to the boy who manages to grow up under this system without learning to read and write: "We will reward your evasion of the law by giving you the highest privilege of citizenship." We do this although such a boy must necessarily have some quality that unfits him for good citizenship. Could anything be more completely inconsistent and stupid? There have been legitimate excuses for illiteracy in the past. There is absolutely no excuse for the Indiana boy of today who grows up illiterate.

Illiteracy has become a special menace to good government through the opening it offers for the corruption of voters. Indiana has made an earnest effort to prevent bribery in elections. The purpose of the Australian ballot law is to prevent the voter from proving how he voted to the man who buys his vote. He can state how he voted, but can only give his word.

The one weak point in the Indiana law is the permission to the illiterate voter to have his ballot marked by the poll clerks; and this is allowed to make the law constitutional. The qualifications of voters are fixed by the Constitution, and, under the decisions of the courts, can not be added to nor taken from by law, either directly or indirectly.

As illiterates are allowed to vote, by the Constitution, the right could not be taken from them by providing an election system under which they could not vote. But it is notorious that this provision is grossly abused, and is made a common mode of vote buying; the poll clerk, in violation of his oath, certifying to the purchaser how the voter has voted. The only apparent mode of removing this evil is to stop admitting illiterates to suffrage.

The remaining restriction on suffrage that is proposed is the requirement of the payment of current poll tax, and poll tax of the year previous to the election. The provision makes the poll tax separable from other taxes, in order to avoid any hardship on persons who for temporary reasons are unable to pay their property taxes. For all practical purposes the poll tax is a suffrage tax, although men more than fifty years of age are exempt. It is the only tax payable by the voter unless he owns visible property—his only contribution to the cost of government. The requirement of its payment in a number of the States is on the theory that a man who is not enough interested in his government to pay his poll tax ought not to have any voice in the government.

The chief objection to it is that in some States the political parties pay poll taxes as a part of the process of buying votes. The proposal of the constitution is to avoid this by making all poll taxes payable in the spring, before campaigns begin. If this should fail to prevent the vote buying there would at least remain the fact that the amount so paid would go into the public treasury instead of the pocket of the corrupted voter.

It will be noted that these restrictions are wholly of future application. It is not proposed to disfranchise any present voter; but to allow all legal voters to register up to November 1, 1913, after which the educational test is to be put in operation. This delay is allowed to bring about the ultimate adoption of the reform. There were more than forty thousand illiterate voters in Indiana by the census of 1900, and there are many more now. If it were proposed to disfranchise them, they would probably vote against the constitution, and defeat it; but they would have no personal ground for objection to a restriction applying to the future.

It is worthy of note that at present Indiana is not among the progressive States in the matter of suffrage. Thirty-five of the States of the Union admit only citizens of the United States as voters. The States which allow voting on declaration of intention are Alabama, Arkansas, Colorado, Indiana, Kansas, Missouri, Nebraska, Oregon, South Dakota, Texas and Wisconsin. Of these only Indiana, Kansas, Oregon and Nebraska admit the foreigner to suffrage on less than one year's residence in the State.

The educational qualification for suffrage is a comparatively recent advance, though in the Colonies there were property and other qualifications that were largely equivalent to the educational qualification. In the early years of the republic there was a general movement

toward "manhood suffrage," which took away most of the bars, though at the same time they were raised against the negro.

Prior to the revolution negroes were allowed to vote in all the Colonies but Georgia and South Carolina. Between 1792 and 1834 negro suffrage was abolished by Delaware, Maryland, Virginia, New Jersey, New York and Connecticut. North Carolina followed in 1835, and Pennsylvania in 1838. The only States with educational qualifications prior to 1889 were Connecticut, which adopted them in 1855, and Massachusetts, which adopted them in 1857.

In 1889 Wyoming led off with provision for educational qualification. The example was followed by Mississippi in 1890, Maine in 1893, California in 1894, South Carolina in 1895, Louisiana in 1898, Delaware and North Carolina in 1900, Alabama and Virginia in 1901, and Georgia in 1908. In the Southern States there were discriminating provisions which allowed suffrage to ignorant whites while they denied suffrage to ignorant negroes, but these were all of temporary application, and at the present time the restriction applies to all new voters, white and black alike, except in Georgia, where the discrimination ends on January 1, 1915.

The growth of the sentiment has been shown in Congress by provisions for our insular possessions. In Hawaii the voter must be able to read and write either the English or the Hawaiian language. In the Philippines he must be able to read and write either English or Spanish, but exemption is given to persons with $250 of property and those who held "substantial office" under the Spanish regime. The Foraker act of 1900 gave "manhood suffrage" to Porto Rico, but in his recent report on Porto Rican conditions, Secretary of War Dickinson recommended the adoption of educational or property qualifications, and this was indorsed by President Taft, who said: "It is much better, in the interest of the people of the island, that the suffrage should be limited by an educational and property qualification." (House Doc., 615, second session Sixty-first Congress, and Cong. Record, vol. 45, p. 1199.) Is there a sane person in the United States who doubts it? And if it be a good thing, is there anything too good for Indiana?

VIII.

To Eliminate the Gerrymander.

If any Hoosier whose memory runs back over the last forty years were asked what local questions had caused the greatest political controversy in that period, he would probably answer, on reflection, that they were the gerrymander and the appointing power. He would recall the days when Thomas A. Hendricks and Benjamin Harrison alternately canvassed the State, denouncing, respectively, Republican gerrymanders and Democratic gerrymanders.

He would recall how Governor Hovey was roused to fury by a Democratic legislature's appropriation of some of his appointments. He would recall how both questions went to the courts, which suc-

ceeded in putting both in such a condition that the wayfaring man, even though a lawyer, can not tell just what the law is. It is the effort of the proposed constitution to eliminate these two causes of trouble as completely as possible.

The obvious cause of the gerrymander is the irrational basis of representation provided by the present Constitution. It requires an enumeration every six years of "the white male inhabitants over twenty-one years of age" (the word "white" removed by implied repeal) and the apportionment of Senators and Representatives "among the several counties, according to the number" of voters enumerated. The adoption of this system is probably an illustration of the force of American habit, for there was never any good reason for it.

The enumeration is a needless expense, and affords opportunity for both mistake and fraud, while a much more reliable enumeration is provided by the United States census. The members of the legislature do not represent voters only, but the entire population of their districts. The idea of personal or numerical representation has only a secondary place in American theories of government. The American axiom that "taxation without representation is tyranny" does not mean the taxation and representation of the individual. There have always been thousands of individuals who have been taxed without having any voice in government. It means, and has always meant, that the taxation of a community without representation is tyranny.

The natural community unit of representation in Indiana is the county, and this fact is recognized by the Constitution itself, both in the provision for apportionment "among the several counties," and by the provision that "no county, for senatorial apportionment, shall ever be divided." By universal consent this last rule has always been applied also to representative apportionment, if, indeed, that be not an implied requirement of apportionment "among the several counties." The courts, the land record system, the tax system, the jail system, the school system and to a large extent all the remainder of local government, outside of city and town government, is on a county basis. As a natural result many other things follow the same rule and we have churches, bar associations, medical associations and numerous societies of one kind and another, organized on a county basis.

The net result of all this is that the people of each county have a community of public interests, independent of and often differing from those of any other county. As a mere matter of justice and propriety, under the American theory of government, such a community ought to have a representative in the legislature.

This is, with one exception, the system in force as to the National House of Representatives, each State having one Representative, and the larger ones additional Representatives for quotas of population. The difference is that the congressional quota is fixed by Con-

gress, and is a periodical cause of jugglery and squabbling. The proposed Indiana quota is a fixed quantity, ascertained by dividing the total population at the last national census by ninety-two (the number of counties in the State) or, in other words, the average county population of the State. This removes any possibility of discrimination in apportionment for representatives, and corrects an injustice that has long been done to the smaller counties, which have been practically disfranchised by throwing them into "joint districts" with larger counties to "kill their vote."

There is nothing to prevent this in the Constitution or in the decisions of the Supreme Court, and therefore the Democrats usually fasten a small Republican county to a big Democratic county, and the Republicans, vice versa. If there be no satisfactory big county contiguous, the deficiency is supplied by making a "shoestring district" of "unrepresented surpluses," to come within the judicial rulings. Everybody who has paid any attention to practical politics knows the process. Everybody knows it is essentially wrong. Everybody "just laughs" and takes the party advantage that the law allows.

It is to be regretted that an equally efficient remedy could not be applied to senatorial apportionment. The only one that has ever been suggested is to divide the State into five districts, and elect ten Senators from each by proportional representation. This would prevent gerrymandering; but it is met by the practical objection that it would force a candidate for the Senate to canvass a district twice as large as a congressional district, and nobody would want to be a candidate for Senator.

For this reason the proposal was dropped, and the regulation of the election of Senators left as open as possible in the hope that future ingenuity might suggest some mode of senatorial apportionment that did not admit of abuse.

In justice to legislators it may be mentioned here that not every apportionment denounced as a gerrymander is necessarily one in fact. It is a mathematical impossibility to create equal districts of counties varying altogether in size, and the fairness of the approximation to equality is a question of judgment only. It is impossible to make an apportionment which is not subject to plausible, though possibly unjust criticism; though usually there is some ground for criticism. It is like the old problem of dividing thirteen apples equally among three boys, without cutting an apple; which the judge solved by appropriating the thirteenth apple to himself and giving the boys four each.

It may also be mentioned here that the proposed representative apportionment would not make a House of Representatives of 130 members, as seems to be assumed in some quarters. That number is made a maximum to cover possible future expansion. By the national census of 1910 the population of Indiana is 2,700,876. Dividing this by ninety-two we have a representative quota of 29,357. This

would require 44,035 for two Representatives and 73,392 for three Representatives.

Under it, the counties having more than one Representative, with their population, are as follows: Marion (263,661), nine Representatives; Allen (93,386), Lake (82,864), St. Joseph (84,312), Vanderburg (77,438) and Vigo (87,930), each three Representatives; Delaware (51,414), Elkhart (49,008), Laporte (45,797) and Grant (51,426), each two Representatives. This would make a total of 114 Representatives. The number would presumably increase at the next census, but not as rapidly as might be imagined, because the size of the quota would increase with the increase of population. Under the census of 1900 a similar apportionment would have given 109 members. The increase for the last ten years is five members, and there is no apparent reason why it should exceed that in the next ten years.

The abuse of the appointing power by the early legislatures was one of the chief evils sought to be remedied in the Constitution of 1851. The Constitution of 1816 put almost unlimited power in the legislature, partly because the legislative department was the special representative of the people, and partly because the new State was too poor to undertake any special elaboration of government. The legislature elected part of the State officers, and exercised almost unlimited control over local affairs.

With the development of party government came the tendency to take advantage of this power, and it was exercised to an extent that would cause general revolt today. It was so easy, for example, to abolish the office of auditor of Clark County and create the new office of auditor of the County of Clark, incidentally electing somebody to the new office; and this very sort of thing was done in several cases.

The Constitution of 1851 made all of the principal State and County officers elective by the people and gave the Governor power to fill vacancies. But it recognized the probability of new offices being created and provided by section 1, of article 15: "All officers whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law."

The result of this was that the legislature could take any such office whenever it desired, for it made the law, and if the Governor vetoed it the measure could be passed over his veto by a majority vote. It was this situation that brought about the troubles of Governor Hovey, and the lesson which that controversy should teach is that the appointing power should be fixed definitely and permanently.

No more certain cause of trouble can be provided than to leave unsettled a question that involves the possession of political spoils. It is not so important how it is settled as that it should be settled beyond question. "Lead them not into temptation" ought to be a central thought of every constitution. But, as a matter of principle, it is

generally conceded that the appointing power is properly an executive or administrative function, and that it should not be exercised by the legislature. One of the strongest arguments for the popular election of United States Senators is the occasional interference of that function with the business of legislation, which is sometimes suspended for months by a "deadlock." The proposed constitution removes this evil altogether, excepting, of course, the election of United States Senators and the legislative officers.

IX.

Initiative, Referendum and Recall.

The provision of the proposed constitution permitting the initiative, referendum and recall to be adopted by the legislature, on petition of 25 per cent. of the voters of the State, has attracted much criticism from both friends and enemies of the system.

It should be kept in mind that this discussion refers to the "mandatory" initiative and referendum, i. e., allowing a small minority of the voters to submit any measure to a vote of the people, without any intervention of the legislature. Aside from this, we have the freest initiative imaginable in Indiana. Any one can get a bill introduced in the legislature "by request."

We have always had the referendum as to amendments to the Constitution, and there has been a large increase of its use in ordinary matters.

In Indiana, as in all the other States of the Union, the strictness of the former enforcement of the rule against the "delegation of legislative powers" has been much relaxed by judicial construction. It is a far cry from the judicial opinion in Maize vs. The State (4 Ind., p. 342, 1853) to that in The State vs. Gerhardt (145 Ind., p. 439, 1896), and many questions are now commonly referred to the decision of the people that could not have been so referred sixty years ago.

The most notable criticism of this proposed section of the constitution comes from Senator Jonathan Bourne, of Oregon, who is perhaps the most prominent advocate of the initiative and referendum system in the country, and who is quoted in the Indianapolis Star of February 16, as saying:

"That provision was written into the proposed State Constitution by the enemies and not the friends of the initiative, referendum and recall. Either that is true or those who designed it do not know a workable initiative, referendum and recall principle when they see it."

Under the Oregon Constitution 8 per cent. may initiate legislation, and Senator Bourne says "it is practically impossible to get 25 per cent. of the voters to act."

"Nothing but a great impact, such as a tremendous scandal in public office, would arouse 25 per cent. of the electors," he said, "and if they should get aroused they would find that the legislature could

peremptorily refuse to act and they would have no recourse. I have never known an initiative and referendum provision like this. The injection of the legislature as an intermediary makes it unique. It is worse than nothing."

An even more radical position was taken by James Noel, of the Republican lawyers' committee, which appeared against the proposed constitution before the Senate committee. He urged that the legislature should have power to adopt the system without any request whatever from the people.

But why should there be a radical and fundamental change in our system of government if it be "impossible to get 25 per cent. of the voters to favor it"? Why should a legislature, not elected on that issue, but of which possibly a majority—a total of seventy-seven men or more—be authorized to make such a change, without a substantial expression of sentiment by the people? Is that government by the people?

In Indiana we have always held that government by the people meant government by a majority of the people—not by a minority. It is true that in elections the majority govern, even though they be a minority of the whole electorate; but that is only because it is impossible to get all the voters to vote, and it is necessary, to have any government at all, that those voting at an election should decide, But when it comes to law-making, where it is possible to have a majority of all the representatives of the people, we have provided in our Constitution that "a majority of all members elected to each house shall be necessary to pass every bill or joint resolution."

The statement of Senator Bourne calls attention forcibly to the most serious objection to the initiative and referendum system, which is its tendency to minority rule. This is due to the fact that a large proportion of the people will not vote at all on legislative questions. In Indiana this is notoriously true. The present necessity for the adoption of a new constitution arises from the fact that we have a "pending" amendment to the Constitution which has been voted on three times without securing a majority of the electors either for or against it; and therefore remains as a bar to any further amendment under the special amendment system. This experience is not peculiar to Indiana.

In 1900, after a full review of the facts, Dr. Oberholtzer, who is one of the most prominent advocates of the initiative and referendum in America, said:

"So far as our experience has already gone in the United States, a number of glaring defects have been exhibited by the people in their role as lawmakers. The most impressive of these is their strange apathy, even in the face of great issues. They as a mass have so little interest in legislative subjects that only a small percentage will attend the polls for special elections, and at general elections when individual candidates are to be chosen, though the proposition be printed on the same ballots with the names of the candidates, a large

proportion of the voters will not put themselves to the slight trouble of placing a pencil mark under the word 'Yes' or 'No.' The conclusion is unavoidable that the people considered as a body do not know anything, nor do they care anything, about the merits or demerits of a particular law. * * * It is true that the largest possible vote is never polled for candidates, but, speaking roughly, twice as many electors vote for individuals as vote for measures." ("The Referendum in America," page 411.)

Nor is this experience limited to America. We hear a great deal about the success of the system in Switzerland, but, writing of that in 1907, Arthur Sherburne Hardy says:

"One of the strongest claims made for the referendum was that it would silence the protestations of the minority by showing where the real majority is. This claim the remarkably large number of abstentions would certainly seem to negative. In the case of so important a measure as the constitutional amendment of July 7, 1891, establishing the initiative, less than one-half the registered voters (641,692) participated, the affirmative and negative votes being 183,029 and 120,599, respectively. Only when a fine is imposed for failure to vote is the voting general. For example, in two communes of the Canton of Zurich, where voting is obligatory, 94 and 97 per cent. of the voters took part, while in three communes where voting is not obligatory, only 19, 14 and 10 per cent. voted on the same measure. From 1869 to 1888, in sixty-eight measures submitted to the people in Berne, the average abstentions were 45 per cent. In Bale-Campagne, from 1864 to 1881, of ninety-four popular votes, seventeen were altogether without result because an absolute majority, as required, took no part whatever." (Independent, June 13, 1907.)

The experiment was tried in Canada in 1898 in a special vote on the liquor question under "The Prohibition Plebiscite Act of 1898." The election covered the entire Dominion of Canada, and cost the government about $300,000. A small majority favored prohibition, but less than 30 per cent. of the voters went to the polls. A Canadian correspondent of the New York Evening Post wrote, at the time: "In some cases half the electorate polled, but these were exceptional. From one-fourth to a third was a more common proportion, and in some districts it fell as low as one-eighth. Many of those who did vote seemed to wander into the polling stations more by accident than by set purpose."

In November of this same year, 1898, it is said that "the people" of South Dakota adopted the initiative and referendum system. What actually happened was this: The question was submitted as a constitutional amendment, and was adopted by a vote of 23,816 to 16,483. But at the same election there were 75,159 electoral votes cast, and this was a light vote, for at the presidential election two years earlier the vote of the State was 82,777. A plurality of less than 7,500 with over 50 per cent. of the people not voting, fastened the system on South Dakota! Is that government by the people?

But we are told that it is different in Oregon; and it must be admitted that the popular interest shown in legislation there exceeds any manifested in any other part of the known world. The cause of this is not known. It may be due to the fact that the citizens of that State have nothing to do but kill the bugs on their apple trees—an occupation which leaves their minds free for the consideration of legislative problems. If this be the reason, their experience would be of no value in Indiana, where the mind of the average citizen is always absorbed in working out the plot for his next novel.

But even its example is not conclusive. In his great speech on "The Bliss of Oregon," delivered in the national Senate on May 5, 1910, Senator Bourne set out the votes of the State on referendum questions for three years. In 1904 two questions were submitted, on one of which 72,559 votes were cast, and on the other (a local option liquor law) 83,514 votes. The average of the two is 78,036, which is 86 per cent. of the total electoral vote (90,154) cast that year. In 1906 there were eleven questions submitted, and the average vote on them was 74,102, which was 76 per cent. of the total electoral vote (96,715) cast in that year. In 1908 there were nineteen measures submitted by referendum, and the average vote on them was 86,435, which is 74 per cent. of the total referendum vote (116,614) as shown by the official returns from the poll books.

In 1910 there were thirty-two questions submitted, and the official returns of the poll books show that 120,248 persons voted on them. The average vote on each question was only 84,316, or 70 per cent. of the total vote cast. The explanation of this is, of course, that some of the electors voted on one question and some on another. Of the measures submitted, eleven were constitutional amendments. Of these, seven were rejected and four adopted. Of the four adopted, not one had a majority of the 120,248 electors voting. The heaviest voting was on the prohibition amendment and the prohibition law, both of which were defeated by large majorities. On each of these the vote exceeded 100,000, and they were the only ones on which so large a vote was cast, excepting the city local option measure, which was carried by a small majority. The next highest vote was on the woman's suffrage amendment, which was defeated for the fifth time since Oregon adopted this system, the vote being 35,270 to 59,065.

Possibly this experience is too brief for conclusive judgment, but a decrease of 19 per cent. in the referendum vote in six years would seem to indicate that the people of Oregon are tiring of the practice. They have already reached the point where constitutional amendments and important laws are being adopted by minorities. Moreover, the heavy vote is apparently called out by the desire to defeat objectionable measures; and why should small but aggressive minorities have the power to put the majority on the defensive, year after year, to protect the laws and institutions they wish to preserve? One of the objects of our National Constitution is "to preserve

domestic tranquility." Possibly it might be worth while to try something on that line in Oregon.

Possibly the results in Oregon are satisfactory to Senator Bourne —there is no reason why they should not be, personally. But I confess that they leave me still open to conviction. It is plainly evident that the average American still clings to the representative system, so far at least as general lawmaking is concerned. He looks on the initiative and referendum much as he would on any proposal to hire some one to do a piece of work for him, and to reserve the right to do the work himself. He hires legislators to make laws, and reserves only the right to object if the laws do not suit him. However, if the people of Indiana should ever want to try this system, they have the right to do so, and certainly would do so.

X.

Workmen's Compensation Law.

Of the changes proposed, only two affect the part of the Constitution known as "the bill of rights." The first of these permits the legislature to enact "a workman's compulsory compensation law for injuries occurring in hazardous employments." This is a change favored by practically everybody concerned. In Indiana, as in the rest of the civilized world, the enormous development of industries since the present Constitution was adopted, with the introduction of rapid transit, steam and electric power, high explosives, and complicated machinery, has made accidents a fixed feature of a large part of industrial employment. Experience has convinced all intelligent inquirers that it is advantageous to both employers and employes to settle for injuries without litigation if possible. The only obstacle to legal provision for this is the constitutional restriction of remedies to "due course of law."

There is no great difference of opinion as to what are "hazardous employments." The model "Workmen's Compensation Bill for Uniform State Legislation," proposed by the National Civic Federation, limits them to employment "in or about a railway, factory, mine or quarry, electric, building or engineering work, general or terminal warehouse, grain elevator, malthouse, coal yard, lumber yard, stock yard, building material yard, or shipyard." This bill does not apply to an injury which "does not disable the workman for a period of at least two weeks from earning full wages." The proportion of accidents in such occupations does not vary materially on the average, throughout the country. In Indiana the reports of the coroners to the Bureau of Statistics for the year 1910 show a total of 1,113 fatal accidents, of which 391 were on steam railways, 109 on interurbans, and 29 on street railways—"all others," 684. No other figures for 1910 are at hand, but for 1909 the Department of Inspection reported 45 fatal and 305 serious accidental injuries in factories; and the Mine

Inspector reported 50 fatal, and 533 permanent and serious accidental injuries in mines in this State.

The percentage of accidents is so fixed that accident and liability insurance have become well-established industries, based on averages as reliable, mathematically, as those of life and fire insurance. John Mitchell stated the fact in a very forcible way, in his address to the Industrial Welfare Conference at New York, in November, 1909, in these words: "It is not to our credit that in America, in this country we all love, more men are killed in industry, more men, both in the aggregate and in proportion to the number employed, than in any other country in the world. In my own trade four men are killed for each one killed in other countries. In my trade, tomorrow, not less than twenty men must die. Every day the dawn breaks, from ten to twenty men who enter the darkness of the mine return no more to their wives and loved ones. This is a problem—a living problem—that cries aloud for solution. I am heartily in favor of workmen's compensation. I believe that our laws should be so amended, or that such contracts should be made between employers and workmen, that when a man is injured or a workman is killed, the money needed for the relief of the injured workman or for the relief of the family of the workman who has been killed, should be available at once; not five or ten years after the death or accident occurs."

This is the practically unanimous position of labor organizations, and employers on a large scale take largely the same position. In the agitation of this question in Indiana, one of the strongest presentations of the merits of the system was the address before the State Bar Association, on July 7, 1909, by Hon. A. C. Harris, whose extensive legal experience and opportunity for personal observation of the system while Minister to Austria, make his views of more than ordinary weight. He gave the following statement of the payments of damages for accidents, in one year, by seven railroad companies, doing business in Indiana, which he had obtained from friends connected with these companies: "A," $307,117.88; "B," $337,866.28; "C," $224,950.86; "D," $405,815.81; "E," $109,682.86; "F," $493,290.65; "G," $284,127.22. As is commonly known, all railroad companies, and many other large corporations, have their attorneys, claim agents, and adjusters, who endeavor to make compromise settlements for damages whenever accidents occur; and Mr. Harris stated that some of these companies had paid "more on settlements than by way of judgments."

In addition to this effort to avoid litigation, many large employers take out liability insurance to meet the cost of damages for accidents. In 1910 the State of Illinois established a commission to investigate this question, with a view to legislation, which did its work very thoroughly, and presented a valuable report. Among its sources of information was the Illinois Manufacturers' Association, 141 of whose members reported to the commission. Of these, 138 took out liability

insurance, for which they paid a total of $100,715.95 a year. In addition to this, 17 of the companies reporting contributed to "mutual aid societies" to the extent of $19,539.91 a year; and 84 companies furnished medical services to employes, costing them $20,841.95 a year. The commission showed that the total cost to the companies for all the accidents that occurred, under the proposed compensation law, would have been $74,073.62, or $26,642.33 less than they were actually paying for liability insurance alone. The amounts paid for mutual aid societies and medical services were not taken into consideration, because these also covered "sick benefits," which could not be separated from the amounts paid for "accident benefits."

This difference in cost is obviously due to the fact that the compensation plan is one of direct settlement, which does away with the "middleman" in the shape of insurance companies. Of necessity the expense and profits of the insurance companies must come from the insured. In reality the compensation plan is a form of direct insurance, and in a number of the countries that have adopted it the system is one of direct insurance in form as well as in theory.

Under our "due course of law" system, the workman has a similar expensive middleman in the lawyer. Not usually being able to pay a direct fee, the workman commonly agrees on a contingent fee of one-third to one-half the amount recovered, and this usually applies to settlements out of court. In 17 cases of settlement without trial reported by the Illinois commission, out of $38,240 paid by the employers, $11,085, or nearly 30 per cent. went for attorneys' fees and costs. In addition to the cost the workman has the hazard of losing altogether through some legal technicality, even if he has a meritorious case. Mr. Harris estimates that "at least one-half of the cases appealed are reversed, not on the evidence, but from some mistake of somebody in the long course of procedure, extending from the complaint to the petition for a rehearing."

Even more serious to the workman and his family is the delay of settlement, which not uncommonly reaches from two to five years, leaving them without relief when it is most needed. And here is where the public becomes directly interested, because the situation frequently forces an appeal for public aid. Of 147 families thus forced to ask public aid in Cook County, Illinois, the Illinois commission found that 104 families had no income whatever after the injury of the wage-earner; and in the remaining cases there was none but a scant pittance earned by the wife and children. It is the consideration of the public burden that has caused the compulsory insurance legislation of Europe.

In view of the unquestionable facts, Mr. Harris was justified in the following prediction: "When the people at large come to fully understand that in all public utility cases, and largely in all cases of negligence, in the end they pay the verdicts; and that these are dissipated; and that they more or less supply by public and private aid the means to support disabled workmen and their families, it will

not be long until they find a way to relieve themselves on account of any constitutional embarrassment, and to reach better results than now prevail. The people make the laws as they want them. Just when, or in what form this advance will come, one cannot at present foretell. But in time it will come, and abide." The opportunity to remove the constitutional embarrassment is now before the people of Indiana.

His view is confirmed by the general action where a constitutional provision did not prevent it. Great Britain, from which we took the Magna Charta provision for "due course of law," was not impeded by it, because Parliament can change the British Constitution at will; and Great Britain led in the adoption of this system. Its example has been followed by fifteen European nations—every country of Europe but Portugal, Turkey, and the Balkan States—and by Canada, Australia, New Zealand, and the British South African States. Our consuls in these countries report the operation of these laws as satisfactory to both employers and employes. (Report Ill. Employers' Liability Com., p. 214.)

In the United States, Congress passed a law in 1906 applying the system to interstate commerce; but the Supreme Court held it invalid because the wording made it apply to commerce within a State. (207 U. S., p. 463.) Congress then, in 1908, passed another law restricted to interstate commerce. This law was sustained by the Unitel States District Court for Arkansas, in 1909 (169 Federal Reporter, p. 942); but at nearly the same time it was held invalid by the Supreme Court of Connecticut. (82 Conn., p. 352.) Where the courts will finally land with the question is one of the inscrutable mysteries; but it is very evident that if the State of Indiana should want the system it must provide for it in its Constitution.

XI.

Other Proposed Changes.

The remaining proposed changes in the Constitution are so well understood that little explanation of them is needed. Those in the "schedule" apply only to the taking effect of the constitution, and do not affect its provisions. Of those in the Constitution proper, that in section 21, article 1, is a provision that compensation shall be first assessed and tendered before private property is taken by the State for public use, save only in case of necessity. Under the present Constitution the State could take property and leave the owner to get his claim for it allowed by the legislature. Of course emergencies may arise in which such action would be necessary, but the proposed section limits such action to cases of necessity only.

The change in section 4, article 2, is for the prevention of false claims of residence by persons who have left the State as residents but who are brought back to vote. At present "residence" is held to be a matter of "intention," which nobody can know with certainty

but the person affected. For the protection of the public against fraudulent voting, the claimant is required to give evidence of his intention by a simple, public declaration of it.

The proposed section 9 of article 4 limits regular sessions of the legislature to 100 days, and special sessions to 30 days; and limits the special sessions to the specific purposes for which they are called. The present Constitution (section 29, article 4) limits regular sessions to 61 days, and special sessions to 40 days. It is generally conceded that 60 days is too short a time in which to do the legislative work of the State properly, and it is well known that special sessions have been forced repeatedly on this account. A longer regular session, with the restrictions on special sessions, is fairer both to the legislators and to the public.

The change in section 19, article 4, is to get rid of our awkward and confusing system of titles to acts, which was intended to furnish information, but which, when one gets through reading half a page of "An act to amend section 19 of an act entitled an act," etc., is more liable to leave one in hopeless bewilderment. The section amended is seemingly contradictory and vague. Its construction has varied, and in reality the brief title has been largely adopted as in "an act concerning elections." The brief name system was originated in Great Britain, and usually means a single declaratory section, as, "This law shall be known and referred to as 'The General Elections Act.'" The reason and convenience of the system are obvious.

The change in section 22, article 4, permitting special charters for cities, is also one that has in fact been made by a common evasion of the constitutional provision against special legislation. The American people simply will not submit to laws of any kind that cause general inconvenience and are contrary to public sentiment; and the difficulty of amending our present Constitution has caused it to be nullified in various features. One of the most notable was the prohibition of negroes coming into the State, which was an absolute "dead letter" from 1860 to 1880, when it was finally removed from the Constitution in form. This system of amending the Constitution by ignoring or violating it is objectionable as breeding a disrespect for law, and a disregard for the real "sacredness" of the Constitution. It is far better to amend the instrument openly.

As has been mentioned, there were practically no cities in the State when the present Constitution was adopted in 1851, and the problems of city government have developed here since that time. The demands of local self-government made the prohibition of special legislation intolerable, and under legislative evasion and judicial construction, based on the fiction of "classification," special charters have been made at will. Any one who doubts this statement may be convinced by the following extract from the index to the Laws of 1903:

"Cities of more than 100,000, see Indianapolis.
Cities of 50,000 to 100,000, see Evansville.
Cities of 35,000 to 49,000, see Fort Wayne.

Cities of 30,000 to 36,500, see South Bend.
Cities of 20,900 to 30,000, see Muncie.
Cities of 20,200 to 20,900, see Vincennes.
Cities of 17,000 to 18,000, see Marion.
Cities of 7,800 to 7,820, see Goshen.
Cities of 7,200 to 7,700, see Alexandria.
Cities of 7,095 to 7,105, see Frankfort.
Cities of 6,000 to 7,000, see Bedford, Bloomington, Connersville, Crawfordsville, Princeton, Seymour, and Valparaiso.
Cities of 5,300 to 5,800, see Mishawaka.
Cities of 4,500 to 4,545, see Rushville.
Cities of 4,025 to 4,050, see Martinsville.
Cities of 3,410 to 3,420, see East Chicago.
Cities and towns of 2,820 to 2,830, see North Vernon.
Cities and towns of 1,400 to 1,420, see Arcadia, Converse, and Howell."

The plain meaning of this is that in each of these cases the legislature of 1903 adopted a special law applying only to the cities named; and it was very sensible to name the cities in the index, so that people would know what the laws meant without investigating a census report. But it is farcical to talk about the sacredness of the Constitution, and at the same time nullify its provisions by such evasions as this. The Supreme Court has held some of these laws unconstitutional. (162 Ind., p. 193; 164 Ind., p. 117.)

The proposed section 14, of article 5, gives the Governor a real veto power, in place of the nominal one he now has, by requiring a three-fifths vote to pass a bill over his veto, and by authorizing him to veto special items of an appropriation bill. The object of the veto, from the American point of view, is to insure a serious reconsideration of a proposed law in connection with the objections offered to it. Under the present system there have not been lacking instances of bills passed over a Governor's veto, in both houses, under suspension of rules, on the same day that the veto was received. The present veto has no force but what the legislature chooses to give to it.

The changes in sections 1 and 2 of article 6, section 11 of article 7, and section 8 of article 8, put all State and county officers on a common basis of a four years' term without re-election. If there was ever any occasion for the discrimination giving part of them two years' terms, it disappeared long ago, and there is now a general rule of common consent that the occupant of a two-years' office is entitled to renomination without opposition, unless he has given cause for it. The change would remove a multiplicity of elections and simplify the entire official system of the State.

Proposed section 2 of article 7 increases the maximum number of judges of the Supreme Court from five to eleven. In 1851 five judges could dispose of the cases brought to the court, but as the State grew it became impossible to do so. The court fell behind two or three years in the decision of cases, to the great injury of litigants. After

fruitless effort to get a majority of the people to adopt an amendment the legislature of 1891 created an Appellate Court, of five judges, to which a part of the work of the Supreme Court was transferred. Its existence was originally limited to six years, but it was found necessary to continue it, in 1897, in order to secure a reasonable securing of justice "speedily, and without delay." The system is so awkward and confusing that the law has had to be amended repeatedly; and it also denies in some cases the appeal to the Supreme Court which citizens ought to have. It would be much more rational to adjust the court to the business conditions of today, than to try to adjust the business conditions to the court of 1851.

Proposed section 21 of article 7—the cause of the present "tie-up" of the power of amendment—is a question of common sense. The provision that "every person of good moral character, being a voter, shall be entitled to admission to practice law" was put in the Constitution on the amusing theory that the practice of law had become a sort of monopoly. The only objection made to requiring some sort of legal knowledge as a qualification is the equally amusing theory that "it is the smart lawyers that do the damage, and not the ignorant ones." Most of the damage done by smart lawyers is when they are opposed by ignorant ones who do not know how to attend to the interests of their clients. The sale of legal ability ought to have as much safeguard as the sale of butter. A man should not be allowed to misrepresent the quality of his goods—to hold himself out as a skilled lawyer, recognized by the courts, when he has no knowledge of law. Everybody recognizes this as to doctors; but there are cases where the loss of legal rights through an ignorant lawyer are almost as serious as the loss of health through an ignorant doctor.

The remaining changes, those of sections 1 and 2 of article 16, relating to amendment, are among the most important, if not the most important, proposed. The effects to be secured by them are four, as follows:

(1) The present source of trouble is removed by provision that an amendment which does not receive a majority of the votes, when submitted to the people, shall be defeated, and not remain "pending" to block other amendments.

(2) Consideration of amendments is secured by allowing political parties to declare for or against them, and make them party issues. The only way to insure general public consideration of a question in this country is to make it a political issue. An amendment to the Constitution ought to receive careful consideration, and ought to be adopted by a majority of the electors, which is contemplated in the proposed change by requiring submission at a general election only.

(3) The mode of general revision is made definite and certain instead of being left a matter of legislative discretion as at present.

(4) The mode of special amendment is made simple, as was intended in the present Constitution, but failed of accomplishment. Under the proposed change any legislature can submit amendments

to the people, which is practically what is being done now, in the common use of the terms. The people should have in fact, as well as in theory, what they are declared by the Constitution to have, "at all times, an indefeasible right to alter and reform their government." It is both wrong and foolish to put unnecessary obstacles in the way of the exercise of that right.

If a constitution contained only declarations of essential rights it would be different. Nobody wants to take away, for example, the right of habeas corpus, or freedom of conscience, and there is no danger of such a thing no matter how simple amendment may be made. But the Constitution also contains a mass of formal matter as to which a change of conditions may completely change the interests of the public. As to such provisions, the experience of Indiana has demonstrated, as illustrated in cases heretofore mentioned, that when amendment is made difficult the people will remove them either by evading or by ignoring them.

As a whole, there is no known material objection to any of the proposed changes. Some objection has been made because other changes were not proposed, but as to these it should be remembered that their future submission will be much easier if the proposed constitution be adopted than if it be rejected, and the present system of amendment be kept in force. There are some persons who approve of the proposed changes but object to the mode of submission. They should reflect that if they wish to rebuke the Democratic party for submitting a good thing to the people, the logical way to do it is to vote against the Democratic ticket, but for the constitution. In that way you make your rebuke reach the right persons, and do not, at the same time, spite yourself. If you really believe that "it is good meal, but it came through the wrong hopper," the sensible course is to take the meal and save your condemnation for the hopper.

ADDENDUM.

THE INDIANA CONSTITUTION

Parallel Columns Showing Proposed Changes—To be Voted on in November, 1912.

BILL OF RIGHTS.

Present Constitution.	Proposed New Constitution.
Section 12. All courts shall be open; and every man, for injury done him in his person, property or reputation shall have remedy by due course of law. Justice shall be administered freely and without purchase; completely, and without denial; speedily, and without delay.	Section 12. All courts shall be open; and every man, for injury done to him in person, property or reputation, shall have remedy by due course of law; but the General Assembly may enact a workman's compulsory compensation law, for injuries or death occurring in hazardous employment. In enacting such law, the General Assembly shall have the right to define hazardous employment. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.
Section 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the state, without such compensation first assessed and tendered.	Section 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, in case of the State, without just compensation first assessed and tendered, save only in case of necessity.

ARTICLE II.

Suffrage and Elections.

Present Constitution.	Proposed New Constitution.
Section 2. In all elections not otherwise provided for by this Constitution, every male of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled	Section 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the twelve months, and in the township sixty days, and in the precinct thirty days, immediately preceding such election, shall be entitled to vote in the precinct in which he may reside if he shall have been duly registered according to law enacted by the General Assembly as in this section provided and shall have paid his poll tax due and payable the year of such election and the year previous thereto without delinquency; but all poll tax shall be payable in full at the spring payment of taxes, and may be paid separately from other taxes, at the option of the taxpayer.

to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

It shall be the duty of the General Assembly to provide by law at its first session after the adoption of this Constitution, for the registration of all legal voters up to, and including November 1, 1913; but thereafter, no person not theretofore registered shall be admitted to registration who can not read in English or some other known tongue any section of the Constitution of the State.

ARTICLE II.

Present Constitution.

Section 4. No person shall be deemed to have lost his residence in the State by reason of his absence, either on business of this State or of the United States.

Proposed New Constitution.

Section 4. No person shall be deemed to have lost his residence in this State by reason of his absence from the State, either on business of this State or of the United States; but any person absent from the State for twelve consecutive months for other reasons shall lose his residence unless, prior to the expiration of such year, he files with the clerk of the circuit court of the county in which he resides, a declaration of his intent to hold his residence, and the exact location of the same.

ARTICLE IV.

Legislative.

Present Constitution.

Section 2. The Senate shall not exceed fifty nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts into which the State may, from time to time, be divided.

Proposed New Constitution.

Section 2. The Senate shall consist of fifty members, the House of Representatives shall not exceed one hundred and thirty members, the same to be apportioned among the several counties of the State as in section number 4 of this article provided, and they shall be chosen by the electors of the respective counties and the districts into which the State may from time to time be divided.

ARTICLE IV.

Legislative.

Present Constitution.

Section 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after the general election: Provided, however, that the Senators-elect at the second meeting of the General Assembly under this Constitution shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of the Senators of the first class shall be vacated at the expiration of two years, and of those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.

Proposed New Constitution.

Section 3. Senators shall be elected for the term of four years from the day next after the general election: Provided, however, that the Senators holding office at the time this Constitution goes into effect, shall serve until the expiration of the term for which they were elected.

ARTICLE IV.

Legislative.

Present Constitution.

Section 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every six years thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years.

Proposed New Constitution.

Section 4. Each county shall have at least one Representative in the House of Representatives, who shall be elected for a term of two years from the day after their election. A representative quota shall be obtained by dividing the total population of the State at the last national census by ninety-two, and each county having population in excess of a quota shall have an additional representative for each full quota and fractional surplus of half a quota, in excess of the first quota. If any office of representative shall become vacant by death, resignation or otherwise, the Governor shall call a special election to fill the vacancy.

ARTICLE IV.

Legislative.

Present Constitution.

Section 5. The number of Senators and Representatives shall at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants above twenty-one years of age in each: Provided, that the first and second elections of members of the General Assembly, under this constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this constitution.

Proposed New Constitution.

Section 5. The number of Senators shall be apportioned among the several counties according to the population as shown by the last preceding United States census, but they shall only be apportioned every ten years: Provided, That the first election of Senators in the General Assembly under this constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this constitution.

ARTICLE IV.

Legislative.

Present Constitution.

Section 9. The sessions of the General Assembly shall be held biennially at the capitol of the State, commencing on Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session.

Proposed New Constitution.

Section 9. The sessions of the General Assembly shall be held biennially at the capitol of the State, beginning on the first Thursday after the first Monday in January, 1913, and on the same day every second year thereafter, unless a different day or place shall have been appointed by law. The General Assembly shall remain in session for not exceeding one hundred days. If in the opinion of the Governor the public welfare shall require it, he may, at any time, by proclamation, call a special session for a specific purpose or purposes, but for a limited time, not to exceed thirty days, at which special session only such specific purpose or purposes shall be taken up and acted upon.

ARTICLE IV.

Legislative.

Present Constitution.

Section 19. Every act shall embrace but one subject and matters

Proposed New Constitution.

Section 19. Every act shall embrace but one subject and matters

properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

properly connected therewith; which subject shall be expressed in the title unless such act shall provide a brief and comprehensive name for itself, by which it may thereafter be known and referred to; but if any subject shall be embraced in an act which shall not be expressed in or fairly covered by the title, such an act shall be void only as to so much thereof as shall not be expressed or covered.

ARTICLE IV.

Legislative.

Present Constitution.

Section 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and constables.

For the punishment of crimes and misdemeanors.

Regulating the practice in courts of justice.

Providing for changing the venue in civil and criminal cases.

Granting divorces.

Changing the names of persons.

For laying out, opening, and working on highways, and for the election or appointment of supervisors.

Vacating roads, towns, plats, streets, alleys, and public squares.

Summoning and impaneling grand and petit juries, and providing for their compensation.

Regulating county and township business.

Regulating the election of county and township officers, and their compensation.

For the assessment and collection of taxes for the state, county, township or road purposes.

Providing for supporting common schools and for the preservation of school funds.

In relation to fees or salaries; except that the laws may be so amended as to grade the compensation of officers in proportion to the population and necessary services required.

In relation to interest on money.

Providing for opening and conducting elections of state, county, or township officers, and designating the place of voting.

Providing for the sale of real estate belonging to minors or other persons, laboring under legal disabilities, by executors, administrators, guardians, or trustees.

Proposed New Constitution.

Section 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of the justices of peace and constables;

For the punishment of crimes and misdemeanors.

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening, and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and impaneling grand and petit juries and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for state, county, township, or road purposes;

Providing for supporting common schools and for the preservation of school funds;

In relation to fees or salaries except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required.

In relation to interest on money;

Providing for opening and conducting the elections of state, county, or township officers, and designating the place of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees;

But the General Assembly may adopt special charters for the different cities of the state.

ARTICLE IV.

Legislative.

Present Constitution.

Section 29. The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

Proposed New Constitution.

Section 29. The members of the General Assembly shall receive for their services a compensation to be fixed by law, but no increase of compensation shall take effect during the session at which such increase shall be made.

ARTICLE V.

Executive.

Present Constitution.

Section 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered; and if approved by a majority of all the members elected to that house it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.

Proposed New Constitution.

Section 14. Every bill which shall have passed the General Assembly shall be presented to the Governor, if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objection, at large, upon its journal, and proceed to reconsider the bill. If, after such reconsideration, three-fifths of all the members elected to that house shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other house, by which it shall likewise be reconsidered; and, if approved by three-fifths of all the members elected to that house, it shall be a law. If any bill shall not be returned by the Governor within three days, Sunday excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor without his consent within three days next previous to the final adjournment of the General Assembly. The Governor may veto any clause or clauses, item or items, in any appropriation bill, and may approve the residue of such bill.

ARTICLE VI.

Administrative.

Present Constitution.

Section 1. There shall be elected, by the voters of the State, a Secretary and Auditor, and a Treasurer of State, who shall severally hold their offices for two years. They shall per-

Proposed New Constitution.

Section 1. There shall be elected by the voters of the State, a Secretary, an Auditor, a Treasurer of State, Attorney-General, Reporter of the Supreme Court, and Clerk of the Su-

form such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than four years in any period of six years.

preme Court, said officers and all other State officers created by law are to be elected by the people, except Supreme Court Judges, shall severally hold their office for four years. They shall perform such duties as may be enjoined by law; and no person other than judges shall be eligible to any one of said offices for more than four years in any period of eight years.

ARTICLE VI.

Administrative.

Present Constitution.

Section 2. There shall be elected, in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor. The clerk, auditor, and recorder shall continue in office for four years; and no person shall be eligible to the office of clerk, recorder or auditor, more than eight years in any period of twelve years. The treasurer, sheriff, coroner and surveyor shall continue in office two years; and no person shall be eligible to the office of treasurer or sheriff more than four years in any period of six years.

Proposed New Constitution.

Section 2. There shall be elected in each county by the voters thereof at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for four years; and no person shall be eligible to either of said offices for more than four years in any period of eight years.

ARTICLE VII.

Judicial.

Present Constitution.

Section 2. The Supreme Court shall consist of not less than three, nor more than five judges, a majority of whom shall form a quorum; they shall hold their offices for six years, if they so long behave well.

Proposed New Constitution.

Section 2. The Supreme Court shall consist of not less than five, nor more than eleven judges; a majority of whom shall form a quorum. They shall hold their office for six years, if they so long behave well.

ARTICLE VII.

Judicial.

Present Constitution.

Section 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for two years.

Proposed New Constitution.

Section 11. There shall be elected in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for four years and shall not be eligible to hold said office more than four years in any period of eight years.

ARTICLE VII.

Judicial.

Present Constitution.

Section 20. The General Assembly at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, simplify, and abridge the rules, practice, pleadings and forms of the courts of justice. And they shall provide for abolishing the distinct forms of action at law now in use and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also,

Proposed New Constitution.

Section 20. The General Assembly shall, from time to time, take such steps as may be necessary for the codification of the laws of the State and on petition of twenty-five per centum of the qualified electors of the State at the last general election, the General Assembly may adopt laws providing for the initiative, referendum and recall, both of State and local application. But no bill for the recall of the judiciary shall ever be passed.